Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN F. PEOPLES,
Petitioner

v.

HOWARD I. LANGER, *et al.*
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John F. Peoples
2701 W. Chester Pike, # 104
Broomall, PA 19008
Phone: 610-356-2711
Fax: 610-356-2763
Email: johnfpeoples@yahoo.com
Pro Se Petitioner

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QUESTION PRESENTED

I.

Whether it contravenes the Anti-Injunction Act and the holding in *Syngenta Crop Protection, Inc. et al v. Henson*, 537 U.S. 28, 123 S.Ct. 266, 154 L. Ed. 2d. 368, 71 USLW 4001 (2002), for a federal district court to exercise jurisdiction over a state court civil lawsuit by issuing an All Writs Injunction, where there is no federal subject matter jurisdiction over the state court claim, and where there is no competent evidence that the Injunction is necessary in aid of Jurisdiction or necessary to protect or effectuate a federal court judgment.

II.

Whether the Third Circuit Court of Appeals' holding in *In re Linerboard Antitrust Litigation*, 2010 U.S. App. LEXIS 935, 2010-1 Trade Cas. (CCH) P76,868 (3d Cir. 2010), from which this Petition arises, creates a split in the circuits, by upholding an All Writs Injunction without an evidential showing that the matter falls within one of the Anti-Injunction Act's exceptions, which contradicts the holding of the Ninth Circuit in *Sandpiper Vill. Condo. Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d 831 (9th Cir. 2005).

PARTIES TO PROCEEDING

The Petitioner on this Petition is the individual John F. Peoples. The Respondents on this Petition are the individual Howard I. Langer, Esquire and the law firm of Langer, Grogan & Diver, PC. There is no parent or publicly held company owning 10% or more of any party-corporation's stock.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at *In re Linerboard Antitrust Litigation,* 2010 U.S. App. LEXIS 935, 2010-1 Trade Cas. (CCH) P76,868 (3d Cir., Jan. 14, 2010). The opinions of the United States District Court for the Eastern District of Pennsylvania are reported at *In re Linerboard Antitrust Litigation,* 2008 U.S. Dist. LEXIS 77739 (E.D.Pa., Oct. 3, 2008) and *In re Linerboard Antitrust Litigation,* 2008 U.S. Dist. LEXIS 54359 (E.D.Pa., July 15, 2008).

JURISDICTION

The decision of the United States Court of Appeals for the Third Circuit, affirming in relevant part the decision of the District Court's Orders was handed down on January 14, 2010. A timely Petition for Rehearing was denied on February 1, 2010. This Court has Jurisdiction pursuant to 28 USC § 1254(1).

RELEVANT PROVISIONS INVOLVED

All Writs Act, 28 USC § 1651
Anti-Injunction Act, 28 USC § 2283
Fed. R.C.P. 65

STATEMENT

The Petitioner, John F. Peoples, Esquire, and the Respondent Howard Langer, Esquire, both residents of Pennsylvania, had a dispute over a personal debt Langer owed to Peoples for advice and assistance Peoples had provided Langer. The dispute was over a contract whereby Langer personally promised to pay Peoples. When Langer breached the contract, Peoples began a civil action in the Court of Common Pleas for the County of Philadelphia. Langer was Liaison Counsel in a Class Action presided over by Judge Jan E. DuBois, USDJ in the Federal District Court for the Eastern District of Pennsylvania. Langer Removed Peoples' case to federal court. In addition, Langer requested that Judge DuBois issue an All Writs Injunction on the allegation that Peoples was interfering in the Class Action. Judge DuBois entered the Writ ex parte without a hearing. The All Writs Injunction prohibited Peoples from proceeding with his State Civil action.

Judge DuBois eventually dismissed the "All Writs Injunction" but when Peoples attempted to move forward with his State claim, Judge DuBois reinstated the injunction. Peoples avers Judge DuBois had no subject matter jurisdiction over the State proceedings and without a separate jurisdictional nexus, an "All Writs Injunction" was not a basis for jurisdiction under the holding of This Court in *Syngenta Crop Protection, Inc. et al v. Henson*, 537 U.S. 28 (2002). Chief Justice Rehnquist with approval comments from Justice Stephens, held unless there are underlying jurisdictional reasons, a District Court

may not base removal upon the adoption of an "All Writs Injunction".

John F. Peoples, Esquire, the Petitioner, is an attorney who has been blind from birth. He is unable to engage in various forms of legal practice however, he has studied the applicable law which applies to class actions and in the past, has referred class actions to other lawyers and has provided them with usable legal theories which have been productive.

In 1998 Peoples provided information and a potential plaintiff to Howard Langer, Esquire, who specializes his practice in the prosecution of class actions. That information eventually evolved into the prosecution of an action subsequently known as the "Linerboard Antitrust Litigation." In consideration of the information and the potential "Plaintiff" (Winoff Industries), provided by Peoples, Howard Langer promised to compensate Peoples by paying him 10% of the resulting fee earned by Langer.

Peoples never became a party to the action and never entered his appearance in the class action. Nor did he in any manner whatsoever, make a claim upon the fund created by the class action. He never objected to a distribution nor did he participate in any manner whatsoever in the class action.

On June 2, 2004, the Honorable Jan E. DuBois, senior Judge in the United States Federal District Court for the Eastern District of Pennsylvania entered an Order in case Number MDL No. 1261 (Document 388) which awarded counsel fees of 30 percent of the

total settlements of $202,572,489 with allocations to specific firms to be made by Howard Langer who was identified as "liaison counsel". (Judge DuBois had appointed Langer as "Liaison" counsel.) Also a payment of $1,391,203.36 was made to reimburse for expenses. That distribution had been unopposed.

The Petitioner, John F. Peoples, learned of the payment to Langer and in a discussion with Langer was offered two million dollars. Peoples rejected that offer as a breach of the contract between him and Langer. Langer then withdrew the offer and refused to pay any amount.

Peoples had never represented any party in the Class action and had never entered into the case. There was no diversity of citizenship between him and Langer. There was no claim for Federal Jurisdiction and the laws of the Commonwealth of Pennsylvania governed any claim between Peoples and Langer. The dispute was a simple breach of contract action and was governed by the laws of the Commonwealth of Pennsylvania.

Distribution of the fund had taken place and the State Claim would not impact upon the Class action that continued on dealing with the "opted out" litigants only. Langer had no financial interest in that portion of the litigation.

On June 23, 2004 twenty days following Langer's receipt of the funds, Peoples, by his attorney, George Bochetto, Esquire, filed a contracts case in the Court of Common Pleas of Philadelphia County in

case bearing ID number 040602565. Peoples sought a jury trial and the Complaint was served upon Langer.

Langer immediately filed a Removal, deceptively averring Peoples was making a claim on the fund. Peoples filed a response seeking to have the case remanded to the State Court, averring his claim was against Langer individually and did not in any manner whatsoever, impact upon the "Linerboard" litigation. Langer then filed a request for an "All Writs Injunction" which was immediately granted without a hearing or an opportunity for Peoples to file a response. Peoples filed a Motion seeking to have the Injunction vacated. Judge DuBois did not address the Motion to Vacate.

On July 9, 2004, Peoples filed a Motion to Remand. The Court did not address the Motion either. When the case was removed, the Clerk of the Federal District Court assigned a case number, namely No 04-2785. The Injunction had been entered in that case as well as in the MDL case. Peoples thereafter was not mentioned in the MDL case. Judge DuBois directed Peoples and Langer to engage in a "mediation" before Magistrate Judge Thomas Reuter. As a result of that procedure, the claim against Langer was resolved when Langer paid Peoples 2.94 million dollars. There was neither action nor any Order approved by Judge DuBois when the settlement occurred. The settlement was supported by assertions by Langer that he did not earn more than 29 million.

On November 17, 2004, Judge DuBois sua sponte entered an Order that case Number 04-2785

was dismissed with prejudice (Document 29) and further that the Motion for Remand, the Motion to Dismiss, and the Motion to Strike were dismissed as "moot".

On the same day Judge DuBois denied as "moot", the Petitioner's Motion to "Dissolve the All Writs Injunction"; a Motion to Extend the time within which he could appeal the Court's July 6, 2004 Order under the All Writs Act as well as all Langer's Motions. (Document#31).

No effort was made to reopen the case within the required 90-day period and nothing occurred which could have been construed as conferring a jurisdictional nexus upon the Federal Court.

Approximately 5 months later, Langer complained to Judge DuBois that the Petitioner, John Peoples had left telephone messages on Langer's telephone declaring Peoples had learned he had been deceived by Langer and that Langer had received substantially more than he had informed Magistrate Reuter. Peoples expressed his displeasure and Langer immediately sought a TRO to forbid Peoples to continue the telephone contacts. Langer sought a Contempt Citation against the Petitioner and also sought a TRO prohibiting the Petitioner from having any contact with him.

Peoples thereupon filed two Motions to Dismiss. The first was filed on October 22, 2006 and the second on February 13, 2007, averring there was no jurisdiction in the Federal District Court and

referring to the original objection to the removal and the subsequent dismissal of case number 04-2785 by Judge DuBois. (Peoples had done nothing to implicate the MDL case and any claim for Federal Jurisdiction had been relinquished by Judge DuBois.)

Judge DuBois ignored the Motions opposing jurisdiction and when faced with the realization that there was no case to serve as a claim of jurisdiction, Judge DuBois sua sponte entered an Order claiming any filings following the dismissal with prejudice must be "correctly docketed in MDL 1261" (Document #65)

Thereafter, Peoples, asserting an appearance of partiality resulting from Langer continuously referring to himself as "Liaison" counsel, required Judge DuBois to recuse. Those Motions were summarily denied.

On July 15, 2008, the Court entered an Order that denied Langer's Motion for Contempt; denied Peoples Motion raising the "Dismissal with Prejudice" four years earlier; and all other Motions were denied as "moot". Peoples had begun an action in the Court of Common Pleas of Delaware County Pennsylvania and Langer filed a Motion seeking to hold Peoples in Contempt for "violating the All Writs Injunction" which had prohibited him from pursuing a State Court action. Judge DuBois denied any relief to Langer.

Langer filed four Motions seeking reconsideration and on October 3, 2008, Judge DuBois reinstated the "All Writs Injunction" without a hearing and the cross appeals proceeded.

By reinstating the All Writs Injunction, Judge DuBois prohibited the Petitioner from pursuing his claim that Mr. Langer had deceived both him and Judge Reuter by failing to honestly disclose the amount paid to Langer thereby deceiving the Petitioner into accepting the offer.

REASONS FOR GRANTING THE PETITION

CERTIORARI REVIEW IS WARRANTED TO CLARIFY that a Federal District Court may not procure jurisdiction over an action pending in a State Court under the guise of authority provided by the "All Writs Act". The District Court for the Eastern District of Pennsylvania and the Third Circuit Court of Appeals has failed to apply the holding of the United States Supreme Court Opinion by Chief Justice Rehnquist in *Syngenta Crop Protection Inc. v. Henson*, 537 U.S. 28, 123 S.Ct. 266, 154 L. Ed. 2d. 368, 71 USLW 4001, (2002) wherein the United States Supreme Court declared the All Writs Act did not give a Federal Court authority to Remove a case from a State Court case in order to prevent frustration of Orders Federal Court had previously issued. Rather, Removal was proper only if the Federal Court independently would have had original subject matter jurisdiction over the suit. (Citing 28 U.S.C.A. §§

1441(A), 1651 (A). In this case there was no independent original subject matter jurisdiction.

In the decision in *Syngenta Crop Protection Inc., v. Henson*, 537 U.S. 28, 123 S.Ct. 266, 154 L. Ed. 2d. 368, 71 USLW 4001, (2002) Chief Justice Rehnquist, joined by Justice Stevens, mandated that the District Courts and the Courts of Appeal were unauthorized to extend federal jurisdiction over a State Court litigation solely upon the adoption of an "All Writs Injunction" unless there was an underlying basis for federal jurisdiction absent the injunction.

In that case, Henson had sued in the Louisiana State Court asserting Ciba-Geigy Corp. (subsequently known as Syngenta Crop Protection) was liable to him. Ciba-Geigy had been sued in Federal Court and Henson successfully intervened in that case, eventually participating in a settlement. (Henson had sought federal jurisdiction).

That settlement contained a stipulation that the "Henson action, including any and all claims ...against [petitioners] shall be dismissed, with prejudice".

Following the approval of the stipulation, the Louisiana State Court conducted a hearing to determine whether the Henson action should be dismissed. Counsel argued the stipulation required dismissal of only some of the claims raised in Henson. (The claim apparently was in error) The Louisiana State Court directed Henson to amend his complaint and proceed on in the State Court. The Petitioners

removed the action to the Federal Court under a claim asserting jurisdiction under the "All Writs Act". The case was transferred to the Southern District of Alabama, which dismissed the Henson action as barred by the settlement.

The Court of Appeals for the Eleventh Circuit vacated the District Court's order dismissing the Henson action reasoning, concluding that §1441, by its terms only, authorized removal of actions over which the district courts have original jurisdiction.

Chief Justice Rehnquist proceeded to clarify the diversion amongst the Circuits where federal jurisdiction had depended upon the issuance of an "All Writs Injunction".

He clarified the law and strongly rejected any claim that the "All Writs Injunction" could be the basis for federal jurisdiction. He also specifically rejected any argument that "ancillary jurisdiction" authorized jurisdiction under the "All Writs Act" and concluded that: "Section 1441 requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court. The All Writs Act, alone or in combination with the existence of ancillary jurisdiction in a federal court, is not a substitute for that requirement".

This argument was made to the Third Circuit Court of Appeals however in the decision attached to This Petition, there was no mention of the case or the legal principal.

On July 6, 2004, the District Court entered an All Writs Act Injunction enjoining Peoples from: "...taking any further action relating to the allocation of fees in MDL 1261 or the action of liaison counsel in connection therewith in any court of forum other that the United States District Court."

Langer had sought the injunction but it was granted without providing Peoples the opportunity to answer to the allegations contained in the application. No hearing was granted nor held; no bond was required and upon Peoples Motion to Dissolve the All Writs Injunction (Document 8, filed July 12, 2004) the Court denied any relief whatsoever and directed Peoples to participate in mediation before the Magistrate Judge.

Since Peoples was never counsel of record nor did he attempt to influence the distribution of counsel fees, no independent federal jurisdiction existed when the Injunction was granted. The Motion seeking to have the Injunction dismissed stated: "...the *Peoples v. Langer* dispute is entirely a state law matter of contract and conversion concerning the personal obligation of Mr. Langer. In this sense, the dispute is not different than any other Mr. Langer may have with regard to his personal earnings as lawyer." (Document 8, page 3, paragraph 8).

A district court's authority under the All Writs Act is limited by the Anti Injunction Act, 28 U.S.C. § 2283 which prohibits injunctions having the effect of staying proceedings in state courts except: [1] as expressly authorized by Acts of Congress, or [2] where

necessary in aid of its jurisdiction, or [3] to protect of effectuate its judgments.

The exceptions in the Anti Injunction Act are to be construed narrowly. *In re Diet Drugs*, 282 F.3d 220, 233 (3d Cir. 2002) The Anti Injunction Act "is an absolute prohibition against enforcing state court proceedings, unless the injunction falls within one of three specifically defined exceptions." *Atl. Coast Line R.R. Co. v. Board of Locomotive Engineers*, 398 U.S. 281, 286 (1970) The Supreme Court has stated that: "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Id.* at 297

The District Court issued the All Writs Injunction pursuant to the second exception to the Anti Injunction Act, "in aid of its jurisdiction" over the Linerboard Litigation.

For this exception to apply, however, "it is not enough that the requested injunction is related to that jurisdiction, but it must be 'necessary in aid of' that jurisdiction." *Atl. Coast Line R.R.* 398 U.S. at 295.

In *Glen W. Turner Enterprises Litigation*, 521 F.2d 775, (3d Cir. 1975), which cites *Atl. Coast Line R.R.* (*supra*), the court found that federal injunctive relief under the All Writs Act is appropriate only "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and

authority to decide that case." The *Peoples v. Langer* dispute presented no issue to be decided in the *In Re: Linerboard Litigation*, the District Court had no jurisdiction to aid or protect and thus was without any authority to issue the All Writs Act injunction.

Aside from the fact there should be no jurisdiction based upon the All Writs Injunction, the District Court failed to follow proper procedure in imposing the Injunction so that even if the All Writs Injunction could impose jurisdiction, the Court failed to follow procedure in imposing the prohibition.

Compliance with Fed. R.C.P. 65 is mandatory. *Florida Medical Association, Inc. v. U.S. Dept of Health, Education and Welfare*, 601 F.2d 199 (5th Cir. 1979) ("The All Writs Act does not free a district court from the restrains of Rule 65."); *John Nuveen & Co., Inc. v. New York City Housing Development,* Nos. 86 C 2583, 86 C 2817, 1986 WL 5780, *(N.D. Ill. May 9, 1986)("...this court regards use of the All Writs Act to avoid the bond requirement of Rule 65(c) as unjustifiable"). Rule 65 requires (a) sufficient notice under Fed.R.C.P. 65(a)(1) of the request for an injunction "and a hearing in which the opposing party is given a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 433 n. 7 (1974); (b) posting of a bond pursuant to Fed.R.C.P. 65 sufficiently detailed findings of fact pursuant to Fed.R.C.P. 65 (d) and 52 (a).

The court never required Langer to either give sufficient notice, provide for a hearing with time to prepare for the same and (or) to post a bond as required by Fed.R.C.P. 65. The court never attempted to set forth sufficiently detailed findings of fact as is required by Fed.R.C.P. 65 (d) and 52(a).

Having failed to follow the requirements attached to the All Writs Act, the issuance of an Injunction based upon that Act was a nullity and aside from all other arguments could not be the basis for a jurisdictional nexus.

When Howard Langer, Esquire, filed his Removal Motion he had no basis to seek removal since there was no federal question, there was no diversity of citizenship and the District Court lacked jurisdiction. He attempted to impose jurisdiction by procuring an All Writs Injunction without any basis to legitimately seek relief. Langer had been sued by Peoples in the State Court claiming a simple breach of a personal contract. Peoples had made no claim upon any fees directly paid to the attorneys in the Linerboard Litigation Class Action and simply sought to enforce a written contract wherein Langer alone promised to pay Peoples for his assistance.

Under *Syngenta Crop Protection v. Henson*, 537 U.S. at 28 (2002) that held that the All Writs act, alone or in combination with the existence of ancillary jurisdiction in a federal court, is not a substitute for the original requirement, the All Writs Act Injunction could not be construed as an independent basis for federal jurisdiction. Judge DuBois failed to require

Langer to comply with the procedural requirements attached to the imposition of an All Writs Injunction. He failed to give Peoples the opportunity to respond and further failed to provide a hearing. No requirement to post a bond was imposed upon Langer and when asked in testimony, what he had earned as a fee from Peoples' assistance, his lawyer objected and Judge DuBois sustained that objection without explanation.

Eventually, Judge DuBois dissolved the Injunction but then upon the repeated entreaties of Langer, he reimposed it, thereby interfering with the State Court action even after the Linerboard Litigation was dismissed and Peoples had never attempted to interfere with the federal court's disposition of the *Linerboard* Litigation.

There never was any federal jurisdiction since none of the claims between Peoples and Langer were federal in nature and there was no independent basis for bringing Peoples into federal court and then forbidding Peoples from properly pursuing a State Court action to air his grievances before the State tribunal.

There was never any evidence that the All Writs Injunction was necessary in aid of Jurisdiction or to avoid frustration of a federal order. That was merely a presumption based on Langer's allegation. Langer as liaison counsel was given deference to make such presumptions, even though he was also a party. This goes against the decision in *Sandpiper Vill. Condo. Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d 831

(9th Cir. 2005), which requires a substantial evidential showing of an Anti-Injunction Act exception. In our case, the Court all along merely presumed it and never attempted to review the evidence to support it. There was no evidence to support it, since the claims between Peoples and Langer had no effect on the allocation of attorney's fees in the class action, which had already taken place.

CONCLUSION

For the above and foregoing reasons, Petitioner respectfully requests the issuance of a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,
John F. Peoples, Esquire
2701 West Chester Pike, Suite 104
Broomall, PA 19008
Phone: 610-356-2711, Fax: 610-356-2763
Email: johnfpeoples@yahoo.com
Pro Se Petitioner

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3493
No. 08-4453
No. 08-4524

In re: LINERBOARD ANTITRUST LITIGATION

LANGER & GROGAN & DIVER, P.C.; HOWARD LANGER;

Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court No. 2-10-md-01261)
District Judge: Honorable Jan E. DuBois

Present: SCIRICA, *Chief Judge*, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN and STAPLETON*, *Circuit Judges*.

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* Honorable Walter K. Stapleton's vote is limited to panel rehearing.

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Date Filed: 02/01/2010

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellee/Cross Appellant John F. Peoples having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Thomas M. Hardiman
Circuit Judge

Dated: February 1, 2010
smw/tyw/cc: Stephen H. Cristal, Esq.
Robert J. LaRocca, Esq.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3493
No. 08-4453
No. 08-4524

In re: LINERBOARD ANTITRUST LITIGATION

LANGER & GROGAN & DIVER, P.C.; HOWARD LANGER;

Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court No. 2-10-md-01261)
District Judge: Honorable Jan E. DuBois

Argued November 30, 2009
Before: FISHER, HARDIMAN and STAPLETON,
Circuit Judges.

Filed: January 14, 2010

Robert J. LaRocca
Kohn, Swift & Graf
One South Broad Street
Suite 2100
Philadelphia, PA 19107-0000
Attorneys for Appellants/Cross-Appellees
Langer & Grogan PC and Howard Langer
Stephen H. Cristal
Law Offices of John F. Peoples
2701 West Chester Pike
Suite 104
Broomall, PA 19008-0000
Attorneys for Appellee/Cross-Appellant
John F. Peoples

OPINION OF THE COURT

HARDIMAN, *Circuit Judge.*

This appeal involves a bitter fee dispute between lawyers John Peoples and Howard Langer that was borne out of the settlement of an antitrust class action. *See In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619 (E.D. Pa. 2004). The orders at issue were entered by the District Court on July 15, 2008 (First Order) and October 3, 2008 (Second Order). Langer challenges both orders while Peoples appeals only the Second Order. For the reasons that follow, we find Peoples's appeal entirely without merit. As for Langer's appeal, we will affirm in part, vacate in part, and remand the case to the District

Court for further proceedings consistent with this opinion.

I.

The long and arduous history of this dispute was explained in detail by the District Court in a memorandum accompanying its First Order, *In re Linerboard Antitrust Litigation*, 2008 WL 2758442 (E.D. Pa. July 15, 2008). Accordingly, we shall recount only the facts and procedural history relevant to these appeals.

The *Linerboard* class action—which originated from multiple cases filed in Illinois and Pennsylvania—was transferred to the United States District Court for the Eastern District of Pennsylvania, docketed as MDL 1261, and assigned to the Honorable Jan E. DuBois. The *Linerboard* settlement yielded approximately $60 million in attorneys' fees, and Judge DuBois appointed Langer as liaison counsel to assist with the fee allocation among class counsel. Liaison counsel was charged with administrative duties such as receiving orders and notices from the Court and circulating them among other counsel in the class, and maintaining files of all documents served upon them so they would be available to all lawyers within the group. *See* Order of July 14, 2008, *In re Linerboard Antitrust Litig.*, No. 98-05055 (E.D. Pa. July 14, 2008) (quoting Judge DuBois's Practices and Procedures Order of October 4, 2000 ¶ 7); *Manual for Complex Litigation* § 20.22 (3d) (providing examples of typical liaison counsel duties including

"communications between the court and other counsel . . . convening meetings of counsel, advising parties of developments in the case, and otherwise assisting in the coordination of activities and positions."). On June 4, 2004, the District Court amended its order of June 2, 2004 awarding counsel fees to include language retaining jurisdiction over the fee allocation and any related disputes.

On June 23, 2004, Peoples filed a civil action in state court, claiming that Langer breached a contract to pay Peoples a referral fee. After Langer removed the case to federal court, the parties proceeded to mediation, which resulted in a settlement whereby Peoples agreed to dismiss his case against Langer with prejudice in exchange for $2.94 million, which was paid "from the amount awarded as counsel fees in MDL 1261." *In re Linerboard Antitrust Litig.*, 2008 WL 2758442, at *3. On July 6, 2004, Judge DuBois entered an order pursuant to the All Writs Act, 28 U.S.C. § 1651 (the All Writs Injunction), enjoining:

> all attorneys who participated in any way in MDL 1261 including, but not limited to, John F. Peoples, Esquire . . . from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania.

Id.

Following the settlement, Peoples began making harassing telephone calls to Langer, which prompted Langer to seek relief in federal court. Judge DuBois first signed—but did not enter on the docket—a stipulated temporary restraining order (TRO) that prohibited Peoples from defaming or having any contact with Langer. On September 8, 2005, the TRO was incorporated into an order (the Consent Injunction) which also was signed by Judge DuBois, but not entered on the docket.[1]

As time passed, Langer moved the District Court to hold Peoples in contempt for violating the All Writs Injunction and the Consent Injunction. In the First Order, the District Court denied Langer's motion and *sua sponte* dissolved both injunctions (as well as the TRO), on the belief that it would soon lose jurisdiction over the case because the class action was winding down. Following Langer's motion for reconsideration, the District Court entered the Second Order, which reinstated the All Writs Injunction, but not the Consent Injunction.

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[1] Ironically, Peoples argues that the Consent Injunction is not enforceable because it was never docketed, even though it was kept confidential to protect his reputation. As stated in the Consent Injunction itself, Peoples expressly waived any argument that the confidential nature of the order impaired its validity. *In re Linerboard Antitrust Litig.*, 2008 WL 2758442, at *5 ("IT IS FURTHER ORDERED that John F. Peoples waives any right to contest the issuance of this Order and the right to contest its effect because it has been issued but not entered.").

On appeal, Peoples claims Judge DuBois erred when he (1) reinstated the All Writs Injunction and (2) failed to recuse himself from the case. In his cross-appeal, Langer claims Judge Dubois erred when he: (1) dissolved the Consent Injunction without considering the correct legal standards; and (2) denied contempt sanctions despite his finding that Peoples violated the All Writs Injunction and the Consent Injunction.

II.

"The standard of review for the authority to issue an injunction under the Anti-Injunction Act and the All Writs Act is de novo." *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 363 (3d Cir. 2001) (citation omitted). We review the terms of an injunction for abuse of discretion, underlying questions of law de novo, and factual determinations for clear error. *Id.* We review all other issues in the case for abuse of discretion. *See SEC v. Warren*, 583 F.2d 115, 121 (3d Cir. 1978) (motion to dissolve injunction); *Roe v. Operation Rescue*, 54 F.3d 133, 137 (3d Cir. 1995) (motion for contempt); *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999) (motion for reconsideration); *In re Antar*, 71 F.3d 97, 101 (3d Cir. 1995) (recusal decision) *overruled on other grounds by Smith v. Berg*, 247 F.3d 532, 534 (3d Cir. 2001). A district court "abuses its discretion where its decision rests upon a clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact." *Danvers Motor Co., Inc. v.*

Ford Motor Co., 543 F.3d 141, 147 (3d Cir. 2008) (internal citation omitted).

III.

In his appeal from the Second Order, Peoples assigns error to the District Court's reinstatement of the All Writs Injunction. Peoples argues that the District Court lacked subject matter jurisdiction to enter the All Writs Injunction in the first instance, and that there was no basis on which to reconsider its prior vacatur of the injunction. We reject both arguments.

A.

Under the All Writs Act, district courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). This power is limited by the Anti-Injunction Act, which prohibits a federal court from enjoining state court proceedings "except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." 28 U.S.C. § 2283. The "in aid of jurisdiction" exception applies to preclude parallel state *in rem* proceedings and also authorizes injunctions in "consolidated multidistrict litigation, where a parallel state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation." *In re Prudential*, 261 F.3d at 365 (citation omitted); 17A CHARLES ALLEN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER, AND VIKRAM DAVID AMAR,

FEDERAL PRACTICE AND PROCEDURE, § 4225 (3d ed. 2009). This exception typically is invoked in class actions where proceedings in state court threaten to undermine the pending settlement of a complex MDL case, such as the one involved here. *See Grider v. Keystone Health Plan Cent., Inc.*, 500 F.3d 322, 330 (3d Cir. 2007). The relitigation exception—which authorizes injunctions "to protect or effectuate" judgments— "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to, and decided by, the federal court," and has also been invoked in class actions. *In re Prudential*, 261 F.3d at 364. In entering the All Writs Injunction, the District Court relied on both the "in aid of jurisdiction" and relitigation exceptions, stating the injunction was "necessary to effectuate its Order of June 2, 2004 addressing allocation of attorneys' fees and to prevent disruption of 'the orderly resolution of the federal litigation.'" *In re Linerboard Antitrust Litig.*, 2008 WL 2758442, at *9 (citation omitted).

Peoples emphasizes that he was not a party to the *Linerboard* action. This fact, while true, is immaterial because the District Court's authority to enforce its injunctions extends over non-parties. *See Pennsylvania v. Porter*, 659 F.2d 306, 325 (3d Cir. 1981) (power conferred by All Writs Act extends to non-parties who "are in a position to frustrate the implementation of a court order or the proper administration of justice"). Peoples filed his initial fee dispute in state court in June 2004, soon after the District Court ordered Langer to allocate fees among class counsel. Peoples requested that the

state court escrow $6 million (10% of the *Linerboard* fee award) until his claims were resolved. Thus, Peoples's 2004 suit against Langer directly implicated the *res* at issue in the MDL case, and threatened to frustrate the orderly allocation of fees pursuant to the District Court's Orders of June 2 and 4, 2004. Therefore, we hold that the District Court had authority to issue the All Writs Injunction precluding further state court litigation over the allocation of *Linerboard* fees under both the "in aid of jurisdiction" and the relitigation exceptions to the Anti-Injunction Act.

B.

Peoples next argues that the District Court erred when it granted Langer's motion for reconsideration and reinstated the All Writs Injunction, contending that his state court case would not interfere with any of the District Court's orders in *Linerboard*. We reject Peoples's argument because his premise is flawed.

A motion for reconsideration may be granted if the movant establishes: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued the prior order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café*, 176 F.3d at 677 (citation omitted). Here, the District Court relied on Langer's submission of new evidence to justify reconsideration of the First Order.

In the memorandum accompanying its Second Order, the District Court found that reinstatement of the All Writs Injunction was necessary because Peoples "intends to relitigate the fee dispute in state court if not enjoined from doing so," which would disturb the allocation of the *Linerboard* class counsel fee. *In re Linerboard Antitrust Litig.*, 2008 WL 4461914, at *8 (E.D. Pa. Oct. 3, 2008). This conclusion was eminently reasonable in light of the following facts: Peoples told a newspaper reporter in July of 2008 that he was pursuing his rightful share of the *Linerboard* fees; on December 31, 2007, Peoples filed a subsequently-withdrawn complaint against Langer and many other members of class counsel seeking 10% of the total fee; and in September 2008, Peoples sought discovery regarding the allocations made to each member of the *Linerboard* class counsel. Given that the $2.94 million already received by Peoples was distributed from the *Linerboard* counsel fee pool, Peoples's attempt to relitigate his fee necessarily threatened the allocation already approved by the District Court and justified reinstatement of the injunction. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, (*Marra*), 314 F.3d 99, 105 (3d Cir. 2002) (affirming injunction under All Writs Act where "continued litigation of these claims would 'unsettle' what had been thought to be settled" and disrupt procedures approved by the district court).

Peoples contends that the "new evidence" relied on by the District Court in granting the motion to reconsider—that Peoples intended to continue state court litigation against Langer—could

not support a motion for reconsideration because it was already known at the time of the First Order. This argument misstates the District Court's reasoning. The new evidence was not that Peoples wanted to litigate generally, but rather that the state court action was an attempt to relitigate the allocation of the *Linerboard* fee award and not merely a personal dispute with Langer as Peoples had claimed. Because this fact had not been clear to the District Court until it reviewed the new evidence, its reconsideration of the First Order was appropriate.[2]

IV.

In his cross-appeal, Langer claims the District Court erred when it: (1) vacated the Consent Injunction and (2) refused to impose sanctions despite finding Peoples in contempt of court. We address each argument in turn.

A.

In vacating the Consent Injunction, the District Court noted that Peoples had made only one threatening phone call in the three years since it was imposed. After Langer presented evidence of an additional phone call after the First Order, the Court

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[2] Reconsideration was also appropriate under the "error of law" prong. In the First Order, the District Court mistakenly held that it would lose jurisdiction to enforce the injunctions once the class action component of *Linerboard* ended, and relied upon this conclusion in vacating the All Writs Injunction. The District Court remedied this error of aw in its Second Order

stated in the Second Order: "[t]o the extent Langer believes the latest message is threatening and violates the law, he should report the incident to the police." Langer argues that the District Court did not apply the proper legal standard for vacating an injunction.

Rule 60(b) authorizes a court to grant relief from a final judgment if "applying [the order] prospectively is no longer equitable" or for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5), (6). In *Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO v. NLRB*, we refused to establish "a rigid, pervasively applicable rule" for modification of an injunction "because equity demands a flexible response to the unique conditions of each case." 64 F.3d 880, 888 (3d Cir. 1995). Instead, we noted factors to consider in deciding whether to modify an injunction, including: the circumstances that led to the entry of the injunction and the nature of the conduct sought to be prevented, the length of time since the entry of the injunction, whether the party has complied or attempted to comply in good faith with the injunction, and the likelihood that the conduct will recur absent the injunction. *Id.* The District Court's conclusion that the Consent Injunction was no longer warranted is supported by the relevant factors.

When the Consent Injunction was entered, Peoples had left a series of ten harassing messages on Langer's voicemail during the time Langer was allocating the *Linerboard* fee award. The purpose of

the Consent Injunction was "to prevent Peoples from interfering with Langer's fee allocations in MDL No. 1261," and it was to remain in effect "until the Court is satisfied that there is no longer a need for it." *In re Linerboard Antitrust Litig.*, 2008 WL 2758442, at *11, *5. The District Court vacated the Consent Injunction on July 15, 2008 "largely because Peoples had not left another telephone message on Langer's voicemail since June 29, 2006, and had had no further contact with Langer." *In re Linerboard Antitrust Litig.*, 2008 WL 4461914, at *9 (internal quotation and citation omitted). In essence, the District Court concluded that the Consent Injunction was no longer necessary. Since the harassing phone calls had substantially diminished, the *Linerboard* counsel fee allocation was complete, and any remaining dispute between Langer and Peoples was primarily of a personal nature, the District Court did not abuse its discretion when it vacated the Consent Injunction and refused to reinstate it.

B.

On July 5, 2006, Langer filed a motion for contempt, alleging Peoples violated the Consent Injunction by placing a phone call to Langer on June 29, 2006. Langer sought prospective coercive sanctions, to be imposed if and only if Peoples were to subsequently violate the Consent Injunction. In March and May 2007, the Court held hearings on the contempt motion at which Peoples revealed that in 2005 he had written a letter to the Disciplinary Board of the Pennsylvania Supreme Court complaining about Langer's conduct in the

Linerboard fee allocation. Peoples also testified that Langer and Judge DuBois had an improper relationship. Specifically, Peoples testified that Langer and "other individuals" led him to believe that Langer could persuade Judge DuBois to settle the fee dispute in Langer's favor. Contrary to Peoples's claim, Langer and the "other individuals" testified unequivocally that they made no such representations to Peoples. On February 22, 2008, Langer filed a second motion for contempt, arguing that Peoples had violated the All Writs Injunction by filing an action in state court regarding the *Linerboard* fee allocation. This time, Langer sought prospective conditional fines, as well as "reasonable and fair attorneys fees for this motion" and "such further relief as this Court deems appropriate."

In the First Order, the District Court found Peoples knowingly violated the Consent Injunction by virtue of the June 29, 2006 message he left on Langer's voicemail, and knowingly violated the All Writs Injunction on October 15, 2005 when he lodged an unsupported complaint against Langer with the Disciplinary Board. Despite these violations, the District Court declined to impose sanctions, concluding that "the Court's jurisdiction over this dispute will end upon termination of the class action component of MDL No. 1261 . . . . Thus, a prospective fine would be unenforceable by this Court." *In re Linerboard Antitrust Litig.*, 2008 WL 2758442, at *17. Langer argues that refusing to impose sanctions after finding that the Orders had been violated was an abuse of discretion.

"Sanctions for civil contempt serve two purposes: 'to coerce the defendant into compliance with the court's order and to compensate for losses sustained by the disobedience.'" *Robin Woods, Inc., v. Woods*, 28 F.3d 396, 400 (3d Cir. 1994) (quoting *McDonald's Corp. v. Victory Invs.*, 727 F.2d 82, 87 (3d Cir. 1984)). The purpose of a compensatory fine is to restore the injured party to the position he would have held had the contemnor complied with the injunction. *Id.* Compensatory sanctions may include the reasonable costs of prosecuting the contempt, including attorneys' fees. *Id.* ("[T]he cost of bringing the violation to the attention of the court is part of the damages suffered by the prevailing party") (quoting *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977)). A district court has "wide, but not unlimited, discretion in fashioning appropriate compensatory sanctions." *Id.* at 401.

The District Court's authority to enforce the All Writs Injunction and the Consent Injunction continued even after the *Linerboard* class action terminated. "A district court has the power to enforce an ongoing order against relitigation so as to protect the integrity of a complex class settlement over which it retained jurisdiction." *In re Prudential*, 261 F.3d at 367-68. Here, the District Court expressly retained jurisdiction over "all issues relating to the fees and costs of counsel in this action" in its June 4, 2004 Order; under *In re Prudential*, its authority to enforce the injunction continued even as the class action was winding down. *See also Marino v. Pioneer Edsel Sales, Inc.*, 349 F.3d 746, 753 (4th Cir. 2003) (district court had

continuing jurisdiction to resolve a dispute as to attorneys' fees "in order to protect the continued integrity of its order approving fair and reasonable fees in the first instance"). Therefore, the District Court erred when it concluded in the First Order that it would lose jurisdiction over the case once the class action ended. Because the District Court relied on this erroneous conclusion of law in declining to impose civil contempt sanctions, we will vacate that portion of the District Court's First Order denying Langer's request for civil contempt sanctions, and remand for reconsideration of Langer's requests for attorneys fees in connection with past violations.

V.

Finally, we consider Peoples's appeal from the District Court's denial of his motion to recuse and his allegations of judicial impropriety against Judge DuBois.[3]

In the District Court, Peoples argued that Judge DuBois had an "appearance of bias and partiality," arising from an alleged improper

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[3] Langer claims that Peoples's appeal of the denial of his motion to recuse is not properly before this Court because his notice of appeal was untimely as to the First Order and failed to challenge the District Court's order of October 2, 2008 denying recusal. We disagree because we "construe notices of appeal liberally as covering unspecified prior orders if they are related to the specific order that was appealed from." *Tabron v. Grace*, 6 F.3d 147, 153 n.2 (3d Cir. 1993). The Second Order was a reconsideration of the First Order and neither the July 14 Order nor the October 2 Order denying recusal became final until the Second Order was entered.

relationship with Langer. On appeal, Peoples cites as evidence of an appearance of bias and partiality: (1) Langer's dual role as liaison counsel and litigant; (2) Peoples's testimony that "other individuals" told him Langer had influence over Judge DuBois; and (3) judicial acts taken by Judge DuBois.

Section 455(a) of Title 28 of the United States Code provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." If a reasonable observer aware of all the circumstances "would harbor doubts about the judge's impartiality . . . then the judge must recuse." *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions,* (*Krell*), 148 F.3d 283, 343 (3d Cir. 1998) (internal quotations and citations omitted). In addition, section 455(b)(1) provides that a judge shall recuse "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."Generally, beliefs or opinions requiring recusal "must involve an extrajudicial factor," *Antar,* 53 F.3d at 574 (citation omitted), and "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States,* 510 U.S. 540, 555 (1994).

Peoples's argument, devoid of legal citation, that Langer's role as liaison counsel automatically

created an appearance of partiality because "the Court is by definition biased in favor of its own court-appointed surrogates, and by law gives deference to them," is baseless. Langer's role as liaison counsel was to coordinate between class counsel and the Court, and to assist in case management. Langer had no power to advise the Court or mediate disputes, nor was he afforded special access to Judge DuBois. *Cf. In re Kensington Int'l Ltd.*, 368 F.3d 289, 297 (3d Cir. 2004). The record contains no evidence of "deep-seated favoritism or antagonism" arising from Langer's administrative role as liaison counsel.

Peoples also argues that his testimony regarding an inappropriate relationship between Langer and Judge DuBois was adequate to support an appearance of partiality and should not have been discounted by the District Court. Peoples gives his self-serving testimony far too much credit. Not only was the testimony unsupported, but it was directly contradicted by three other attorneys, all of whom testified they never made statements to Peoples regarding an improper relationship between Langer and JudgeDuBois. "A charge of partiality must be supported by a factual basis," and recusal is not required based on "unsupported, irrational, or highly tenuous speculation." *In re United States*, 666 F.2d 690, 695, 694 (1st Cir. 1981). Peoples's bare allegations were insufficient to raise objective doubts regarding Judge DuBois's impartiality.

Finally, Peoples's argument that Judge DuBois's imposition of the injunctions and purported

delay in determining the contempt motion does not establish an appearance of partiality. A litigant's dissatisfaction with a judge's rulings does not support recusal. *Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000).

In sum, we conclude that the allegations Peoples leveled at Judge DuBois at the 2007 contempt hearing were spurious. Even worse, both Peoples and his counsel have continued their quixotic crusade on appeal by including unsupported charges and innuendo in the brief filed in this Court. *See, e.g.*, Brief of Appellee and Cross-Appellant Peoples at 8, 28-30, 35-36, *In re Linerboard Antitrust*, Nos. 08-3493, 08-4453, 09-4524 (3d Cir. Mar. 23, 2009). They persist in pressing such allegations on appeal, despite the fact that Judge DuBois explicitly denied the allegations in his Answer to Peoples' Petition for Mandamus in October 2007, stating that "[t]here were no *ex parte* communications between Langer and the undersigned Judge. . . . Langer has no 'personal clout with Judge DuBois.'" R. 897-98.

Whether borne out of desperation or ethical lapses, we do not take lightly Peoples's attempts to sully the reputation of a Judge of the United States who has, after over twenty years of distinguished service, earned a reputation for honesty and fairness. Such accusations, even when unfounded as they are here, can undermine the coin of the realm of the judiciary: equal justice under the law and the public's faith therein. *See In re Palmisano*, 70 F.3d 483, 487 (7th Cir. 1995) ("Indiscriminate accusations

of dishonesty . . . do not help cleanse the judicial system of miscreants yet do impair its functioning–for judges do not take to the talk shows to defend themselves, and few litigants can separate accurate from spurious claims of judicial misconduct."). Thus, while parties and lawyers certainly have a right to challenge wayward jurists, they must do so based on facts, rather than reckless speculation. As the Pennsylvania Supreme Court well stated, lawyers "ha[ve] an obligation to obtain some minimal factual support before leveling charges that carry explosive repercussions." *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 449 (Pa. 2000).

VI.

The learned trial judge correctly noted that Peoples's grievances against Langer have unnecessarily consumed judicial resources for too long. We commend the District Court for the thorough and patient manner in which it has addressed the issues raised in this litigation, particularly in the face of the spurious allegations leveled against it.

For the reasons stated herein, we will affirm the Second Order in its entirety. In addition, we will affirm the First Order in all respects except for the denial of civil contempt sanctions. We leave that issue to the sound discretion of the District Court on remand.

Case: 08-3493 Document: 00319983492 Page: 1 Date Filed: 01/14/2010

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3493
No. 08-4453
No. 08-4524

In re: LINERBOARD ANTITRUST LITIGATION

LANGER & GROGAN & DIVER, P.C.; HOWARD LANGER;

Appellants

On Appeal from the United States District Court for the Eastern District of Pennsylvania
(District Court No. 2-10-md-01261)
District Judge: Honorable Jan E. DuBois

Argued November 30, 2009
Before: FISHER, HARDIMAN and STAPLETON,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on November 30, 2009

On consideration whereof, it is now hereby ORDERED and ADJUDGED that the order of the United States District Court for the Eastern District of Pennsylvania entered October 3, 2008, be and the same is hereby AFFIRMED. It is further ORDERED AND ADJUDGED that the order of the United States District Court for the Eastern District of Pennsylvania entered July 15, 2008, be and the same is hereby AFFIRMED IN PART and VACATED IN PART. All of the above in accordance with the opinion of this Court.

Costs taxed against Appellee/Cross-Appellant John F. Peoples.

Attest:

/s/Marcia M. Waldron
Clerk

DATED: January 14, 2010
smw/cC: Stephen H. Cristal, Esq
Robert L. LaRocca, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

IN RE LINERBOARD ANTITRUST LITIGATION	)	MDL No. 1261
THIS DOCUMENT RELATES TO: Civil Action Numbers 98-5055 and 99- 1341	)	

DUBOIS, J OCTOBER 2, 2008

MEMORANDUM

1. INTRODUCTION

Presently before the Court are Motions of Liaison Counsel Howard Langer (1) for Reconsideration of the Order of July 15, 2008, (2) for Entry of n Order to Protect and Effectuate This Court's Judgment and (3) Alternatively, to Stay That Portion of the Order of July 15, 2009 Providing for the Dissolution of the All Writs Act Injunction Pending Appeal (Document No. 1025, filed July 21, 2008). Three supplements from Howard Langer pertaining to the Motion for Reconsideration are also before the Court: (1) Supplement to Motion to Reconsider the Order Entered July 15, 2008, or Alternatively for Stay Pending Appeal (Document 1026, filed July23, 2008); (2) Second Supplement to

Motion to Reconsider the Order Entered July 15, 2008, or Alternatively for Stay Pending Appeal (Document No. 1028, filed July 24, 2008); and (3) Third Supplement to Motion to Reconsider the Order Entered July 15, 2008, or Alternatively for a Stay Pending Appeal (Document No. 1028, filed July 28, 2008). Also pending is Howard Langer's Motion for Temporary Restraining Order and Preliminary Injunction (Document No. 1043, filed September 12, 2008).[1]

For the reasons that follow, Motion of Liaison Counsel Howard Langer for Reconsideration of the Order of July 15, 2008 is granted and the All Writs Act Injunction is amended and reinstated. In view of this ruling, Motions of Liaison Counsel Howard Langer for Entry of n Order to Protect and Effectuate This Court's Judgment and Alternatively, to Sty That Portion of the Order of July 15, 2008 Providing for the Dissolution of the All Writs Act Injunction Pending Appeal and Howard Langer's Motion for Temporary Restraining Order and Preliminary Injunction are denied as moot.[2]

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[1] John F. Peoples's Second Motion to Recuse Pursuant to 28 U.S.C. §§ 455(a) and 455(b), filed in Civil Action No. 99-1341, is also pending before the Court. The Court will rule on this Motion in a separate Order.

[2] Howard Langer's Motion for Entry of an Order to Protect and Effectuate This Court's Judgment asks the Court tom enjoin John F. Peoples, Esquire from further prosecution of the action currently pending in the Delaware County Court of Common Pleas, *Peoples v Langer*, Case No. 08-001322. The reinstatement of the All Writs Act Injunction encompasses this request and makes a separate, specific injunction unnecessary.

II. BACKGROUND

The current motions relate to a dispute between two attorneys, John F. Peoples, Esquire ("Peoples") and Howard Langer, Esquire ("Langer"), over a referral fee in the underlying *Linerboard Antitrust Litigation*, MDL 1261. On April 21, 2004 the Court approved the last two partial settlements of the class action component of MDL 1261. Order of April 21, 2004 (Doc. No 366). On June 2, 2004, the Court awarded "a counsel fee of 30 percent of the total settlements of $202,572,289 ("Settlement Fund") to all counsel *with allocations to specific firms to be made by liaison counsel, Howard Langer, Esquire ....*" Order of June 2, 2004 (Doc. No 388), *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *2 (E.D. Pa. June 2, 2004) (emphasis added). Langer allocated two million dollars to Peoples for his contribution to the case. (May 3, 2007 Hr'g Tr. 27.) Peoples stated that he made it very clear [to Langer] that [he] was going to get very angry if [Langer] didn't come up with more money." (Id.)

By Order dated June 4, 2004, the Court amended the Order of June 2, 2004 to include the following language: [T]he Court RETAINS jurisdiction over this case including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action." Order of June 4, 2004 (Doc. No. 389); *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, at *1 (E.D. Pa. June 4, 2004)

On June 23, 2004, Peoples filed a complaint in the Philadelphia Court pf Common Pleas, alleging that he was entitled to four million dollars in attorney's fees from the settlement of the Box Class component of MDL 1261. (Peoples's Compl. ¶ 49.) On June 24, 2004, Langer removed the case to the United States District Court for the Eastern District Pennsylvania. The Notice of Removal stated that

> Plaintiff's Complaint seeks a constructive trust on attorney's fees awarded in a class action entitled *In re Linerboard Antitrust Litigation*, MDL No. 1261. Plaintiff has also sought a preliminary and permanent injunction with respect to such fees. The allocation of those attorney's fees is currently pending in this Court before the Honorable Jan E. DuBois. This Court has and is currently exercising jurisdiction over the res that is the subject matter of the constructive trust and injunction sought by plaintiff, namely, the common fund generated by the Linerboard settlements.

(Notice of Removal ¶ 2.) The case was *captioned John F. Peoples v. Howard Langer, Esq. and Langer & Grogan, P.C.*, Civil Action No. 04-2785 (E.D. PA., removed June 24, 2004).

By Order dated Jul 6, 2004, pursuant to the All Writs Act ("All Writs Act Injunction"), the Court

enjoined "all attorneys who participated in any way in MDL 1261 including, but not limited to, John F. Peoples, Esquire and all persons acting in their benefit ... from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania. Order of July 6, 2004 (Doc. No. 408). The Court stated that the injunction was "necessary to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261." Id. (citing *In re Synthroid Mktg. Litig.*, No. 97-6017 (N.D. Ill. Aug. 22, 2003)).

On December 22, 2004, Peoples v. Langer was settled for $2.4 million following extensive conferencing before United States Magistrate Judge Thomas J. Reuter. The case was dismissed with prejudice on November 19, 2004, by agreement of the parties pursuant to Local Civil Rule 41.1(b). Order of Nov. 16, 2004 (Civ. Action No. 04-2785, Doc. No. 29).

On May 3, 2007, during a contempt hearing before this Court, Peoples advised the Court that he intended to relitigate the *Linerboard* counsel fee allocation. (May 3, 2007 Hr'g Tr. 44, 48 (stating, "I want to open the other case").) Following this statement, on December 31, 2007, Peoples filed a complaint against Langer and other *Linerboard* attorneys in the Delaware County Court of Common Pleas, alleging that he was entitled to ten percent of the Box Class counsel fee awarded in Linerboard.

(Peoples Compl. ¶ 100.) On January 9, 2008, Peoples withdrew this complaint without prejudice before serving it; Langer stated that he did not learn that the complaint had been filed until September 8, 2008. (Langer's Notice of New Material Bearing Upon the Pending Mot. To Reconsider 2 (Doc. No. 1041, filed Sept. 9, 2008).)

Also on January 9, 2008, Peoples filed a praecipe for a writ of summons against Langer in the Delaware County Court of Common Pleas; the summons was issued on February 1, 2008, and served on Langer on February 21, 2008. Peoples v. Langer, No. 08-001322 (Del. County Ct. of C.P., filed Jan. 9, 2008). No complaint has been filed in that action.

On January 23, 2008, Peoples served twenty-one interrogatories on Langer relating to the Delaware County Court suit. On March 12, 2008, Peoples moved this Court to compel answers to the interrogatories, filing his motion in the closed federal case of *Peoples v. Langer*, Civil Action No. 04-2785. In response, Langer filed a motion for an Order to Show Cause Why John Peoples and the Law Offices of John Peoples Should Not Be Held in Further Contempt for Initiating a Lawsuit in Delaware County Court in Violation of This Court's All Writs Act Injunction (Motion for Contempt) (Document No. 1019, file March 20, 2008).

The Court ruled on Langer's Motion for Contempt and related motions on July 15, 2008. Memorandum and Order dated July 15, 2008 (Doc.

No. 1204); *In re Linerboard Antitrust Litig.*, 2008 WL2758442 (E.D. Pa July 15, 2008). As part of that Order, the Court vacated the All Writs Act Injunction of July 8, 2004. Id. The Motion for Reconsideration and related filings that are the subject of this Memorandum and Order followed.

On September 8, 2008, Langer was served with discovery request in the Delaware County Court case. (See Langer's Notice of New Material Bearing Upon the Pending Mot. To Reconsider (Doc No. 1041 filed Sept., 2008).) On September 12, 2008, Langer filed a Motion for Temporary Restraining Order and Preliminary Injunction in this Court, requesting that this Court restrain Peoples from seeking to relitigate the allocation of Linerboard counsel fees in general and enjoin Peoples's prosecution of the Delaware County Court action, *Peoples v. Langer*, No. 08-001322 (Del. County Ct. of C.P., filed Jan. 9, 2008), in particular. (Langer's Mot. For TRO & Preliminary Injunction (Doc. No. 1043, filed Sept 12. 2008).)

III. LEGAL STANDARD-MOTION FOR RECONSIDERATION

The purpose of a motion for reconsideration of an order is to correct manifest errors of law or fact, or to present newly discovered evidence. *Max's Seafood Café v. Max Quinteros*, 176 F.3d 669, 677 (3d Cir.1999). A prior decision may be altered or amended only if the party seeking reconsideration establishes at least one of the following grounds: (1) an intervening change in controlling law; (2) the

availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Id.* "Because federal courts have a strong interest in finality of judgments, motions for reconsideration should be granted sparingly. *Continental Casualty Co. v. Diversified Indus.*, Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995) see also *Rottmund v. Continental Assurance Co.*, Inc., 884 F. Supp. 1104, 1107 (E.D. Pa. 1992) An option to reconsider may not raise new arguments that could or should have been made in support of, or in opposition to, the original motion. See *Balogun v. Alden Park Mgmt. Corp.*, 1998 WL 692956, at *1 (E.D. Pa. Oct. 1, 1998).

Moreover, a "motion for reconsideration is not properly grounded on a request that a court consider repetitive arguments that have been fully examined by the court." *Blue Mountain Mushroom Co. v. Monterey Mushroom, Inc.*, 246 F. Supp. 2d 394, 398 (E.D. Pa. 2002); *see also Ogden v. Keystone Residence*, 226 F. Supp 2d 394, 398 (E.D. Pa. 2002) (motion for reconsideration may not be used as means to relitigate a disagreement with the court).

IV. DISCUSSION

A. Motion for Reconsideration – New Evidence

Under the second ground established by *Max's Seafood Café*, a court may grant a motion for consideration based on new evidence not available to

the court at the time it made its prior ruling. 176 F.3d at 677. Such new evidence has been presented in this case. While motions to amend an earlier judgment must be granted "sparingly", the evidence presented since this Court's ruling of July 15, 2008 makes reconsideration appropriate because the new evidence clearly demonstrates that Peoples intends to continue litigating his fee dispute with Langer in such a way as to disturb the overall *Linerboard* counsel fee allocation. The court next turns to the new evidence.

On July 24, 2008a week and a half after this Court's most recent ruling, *The Legal Intelligencer*, a prominent legal periodical, published an article about the Peoples-Langer fee dispute. In an interview for the article, "Peoples vowed to continue his court battles with Langer, noting that he has instituted suit in the Delaware County Court of Common Pleas in which he intends to pursue what he views as his rightful share of the Linerboard fees." Shannon P. Duffy, *Federal Judge Calls Halt to Ugly Fee Dispute*, *Legal Intelligencer*, July 24, 2008 at 1.

On September 3, 2008, Peoples, through his counsel, served discovery requests and a Brief Statement of Nature of Cause of Action ("Brief Statement") on Langer in the Delaware County Court case. (Langer's Notice of New Material Bearing Upon the Pending Mot. To Reconsider, Ex.1 (Doc. No. 1041, filed Sept. 9, 2008).) The Brief Statement outlines the theory of the Delaware County Court Litigation, alleging that Langer

promised to pay to Peoples ten percent (10%) of all fees awarded in MDL 1261 to Langer and all other attorneys representing parties in the Box Sub-class. MDL 1261 settled in 2003 for over $202 million dollars, and Peoples now suspects that Langer and the other attorneys in the Box Sub-Class received approximately $49 million dollars in fees." (*Id.* At 2(emphasis in original).) The Brief Statement also alleges that "Langer and affiliated attorneys had certainly received much more than the $29,400,000 he represented to both Peoples and [Magistrate Judge] Rueter." (*Id.* At 3)

The Brief Statement served in the Delaware County Court case on September 3, 2008 identifies the July 15, 2008 Order vacating the All Writs Act Injunction as removing the final "impediment to discovery by Peoples of the amount of fees received by Langer and others and continuing with the action to recover damages." (*Id.* At 4.) The interrogatories that accompanied the Brief Statement asked Langer to, among other requests, "[i]dentify each communication to any person, including but not limited to Plaintiff and Magistrate Judge Rueter, as to the amount of legal fees received by Langer and the other attorneys in the Box Sub-Class from MDL 1261." (*Id.* at 8.) Peoples also seeks to learn the 'total amount of fees approved and allocated, and the amount of money deducted for payments to Peoples. *Id.* At 9, 10, 12.) These newly available documents reveal the broad scope of Peoples's intended state-court litigation, information that was not before this Court when it vacated the All Writs Act Injunction on July 15, 2008. Such statements and discovery

requests in the Delaware County Court case demonstrate that what this Court considered to be a personal dispute between Peoples and Langer is far more than that- it is an attempt by Peoples, directly or indirectly, to force a reallocation of the fees received by the numerous attorneys who represented the Box Class members in *Linerboard*.

On September 8, 2008, Langer discovered, from examining the docket for the Delaware County Court action, that Peoples had filed a complaint in the same court on December 31, 2007. (Langer's Notice of New Material Bearing Upon Pending Mot. To Reconsider 2 (Doc. No. 1041, filed September 9, 2008).) This complaint, which named Langer and other Linerboard attorneys as defendants, was withdrawn without prejudice on January 9, 2008. (*Id.* Ex.2) When the Court issued its ruling on July 15, 2008, it did not have knowledge of the filing of the Complaint or its contents, which are telling as to the relief that Peoples seeks in the current Delaware County Court suit against Langer. That Complaint alleges that Peoples is due ten-percent of the overall fee awarded to the Linerboard Box Class counsel, that Langer misrepresented to Peoples and to Magistrate Judge Rueter that this overall fee was $29.4 million rather than $49 million, and that Linerboard counsel other than Langer agreed to pay and should have paid Peoples ten percent of their individual fees. (Peoples Compl. ¶¶7, 15, 20, 40, 45, 142-149.)

Peoples's state-court litigation strategy, as revealed by his discovery requests, the Brief

Statement, and the Complaint of December 31, 2007, later withdrawn without prejudice, centers on his theory that Langer lied to both Peoples and Magistrate Judge Rueter regarding the overall Box Class counsel fee. Pursuing this strategy would likely necessitate calling Magistrate Judge Rueter as a witness in the Delaware County trial, despite Peoples's claims to the contrary. (See Peoples's Resp. to the "Notice of New Material Bearing Upon the Pending Mot. To Reconsider" 4 (Doc. No. 1042, filed Sept 12, 2008).)

The newly available evidence, viewed cumulatively, justifies granting the current Motion for Reconsideration under the second ground of Max's Seafood Café. Accordingly, the Court concludes that its Order of July 15, 2008 vacating the All Writs Act Injunction should be reconsidered and amended.

B. The All Writs Act Injunction

1. Jurisdiction

The basis of this Court's jurisdiction to enter an injunction under the All Writs Act, 28 U.S.C. § 1651, preventing any action relating to the *Linerboard* counsel fee allocation in any court other than United States District Court was detailed in this Court's Memorandum of July 15, 2008. Memorandum and Order of July 15, 2008 (Doc. No 1024); *In re Linerboard Antitrust Litig.*, 2008 WL2758442, at *7-10 (E.D. Pa. July 15, 2008). In sum, the All Writs Act Injunction was necessary to

prevent Peoples from interfering with this Court's orders directing allocation of counsel fees in *Linerboard.*

Peoples's argument that this Court lacks jurisdiction over him or over the counsel fee dispute because Peoples never entered an appearance in *In re Linerboard* or because *Peoples v. Langer* was dismissed with prejudice in light of the settlement lack merit. (See Peoples's Resp. to "Notice of New Material Nearing Upon Pending Mot. To Reconsider"2-3 (Doc. No. 1042, filed Sept. 12, 2008); Peoples's Resp. to Mot. For Reconsideration, Civ. Action No. 99-1341 (Doc No. 352, filed Aug.11, 2008).) As this Court explained more fully in its Memorandum of July 15, 2008, its authority under the All Writs Act extends to both parties and non-parties, See Memorandum and Order of July 15, 2008 (Doc. No. 1024); *In re Linerboard Antitrust Litig.*, 2008 WL 2758442. at *10 (quoting *Pennsylvania v Porter*, 659 F.2d 306, 325 (3d Cir. 1981); *United States v. Int'l Bhd of Teamsters*, 266 F.3d 45, 50 (2d Cir. 2001)). The settlement and dismissal with prejudice in the initial fee dispute litigation, Peoples v. Langer, is irrelevant to the Court's jurisdiction as the instant counsel fee dispute pertains to *In re Linerboard Litigation*, MDL 1261, and the Court has jurisdiction over matters relating to the allocation if counsel fees in the underlying class action component of MDL 1261. Order of June 4, 2004 (Doc. No. 389); *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, at *1 (E.D. Pa. June 4, 2004). This broad Order encompasses Peoples's pending suit, despite his

claims that he is litigating an issue not yet decided by the is Court – whether Langer misled Peoples and Magistrate Judge Rueter in the 2004 settlement negotiations. (See Peoples Resp. to the "Notice of New Material Nearing Upon the Pending Mot. To Reconsider" 1 (Doc No. 1042, filed Sept 12, 2008).)

This Court's authority to issue an injunction under the All Writs Act continues even after the termination of the class action component of MDL 1261.[3] The Supreme Court has held that "[I]t is well established that a federal court may consider collateral issues after an action is no longer pending.... Thus, even 'years after an entry of a judgment on the merits', a federal court could consider an award of counsel fees." *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 395-96 (1990); see also *In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d. 161, 166 n.8 (3d Cir. 2008).

The Third Circuit addressed this question in *In re Prudential Company of American Sales Practice Litigation*, 261 F. 3d. 355 (3d Cir. 2001). Member of the class in that case argued that "the district court somehow lost the authority to enforce the Class Injunction against them once the Class Settlement was approved and the Final Order and Judgment entered." *Id.* At 367. The Third Circuit disagreed. As the district court had "expressly retained exclusive jurisdiction to oversee the implementation of the settlement and judgment, "a

[3] The class action component will be terminated shortly following the issuance of this Memorandum and Order.

retention of jurisdiction that the Third Circuit judged "proper", the district court's "authority to enforce the Class Injunction did not end with the entry of the Final Order and Judgment." *Id.* at 367-68. This Court similarly retained jurisdiction "over this case [MDL 1261] including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action" in its Order of June 4, 2004. Order of June 4, 2004 (Doc. No. 389); *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, at *1 (E.D. Pa. June 4, 2004). Under *In re Prudential*, this Court's authority to enforce the All Writs Act Injunction will not end with the class action component of MDL 1261.

Other circuits agree with the approach of the Third Circuit in *In re Prudential*. In a recent Eighth Circuit case, the court held that "[w]hile a district court's jurisdiction typically ends when a case is closed and judgment entered, a district court retains ancillary jurisdiction to 'manage its proceedings, vindicate its authority, and effectuate its decrees'.... We affirm the District Court's determination that it had ancillary jurisdiction to enforce previous orders in the case." *Jenkins v. Kan. City Mo. Sch. Dist.*, 516 F.3d. 1074, 1081 (8th Cir. 2008) (internal citation omitted). In an attorney-fee dispute after the settlement of a class action, the Fourth Circuit held that:

> [T]he district court must have continuing jurisdiction to resolve the dispute in order to protect the

> continued integrity of its order approving fair and reasonable fees in the first instance. Moreover, just resolution of the issues raised by attorney's fees disputes requires both an intimate working knowledge of what occurred during the course of the class action and a uniform dispute process.

Marino v. Pioneer Edsel Sales, Inc., 349 F.3d 746, 753 (4th Cir 2003); see also *Bryan v. Bell S Commuc'ns. Inc.*, 492 F.3d 231,236 (4th Cir. 2007) ("The district court clearly had subject matter jurisdiction when it issued the order finally dismissing Count A. and the district court retained jurisdiction to enforce the judgment."); *In re Mooney Aircraft*, 730 F.2d 367, 374 (5th Cir. 1984) ("While, as we have pointed out above, the Anti-Injunction act is not a grant of jurisdiction, no independent basis of jurisdiction is required for a federal court to entertain an application to enjoin relitigation in state court. The jurisdiction that the federal court had when it entered it original judgment is enough to support its issuance of an injunction.")

The foregoing authority makes two things clear: this Court has jurisdiction to reinstate the All Writs Act Injunction, and it retains this jurisdiction even after the termination of the class action component of MDL 1261.

2. The Appropriateness of Injunctive Relief

Injunctive relief is available in this case despite the potential recourse to a remedy at law-the Settlement and Release of December 22, 2004. Peoples argues that this remedy at law bars injunctive relief. (See Peoples's Resp. to the Mot. For a TRO & Preliminary Injunction 7-8 (Doc. No. 1044, filed Sept. 29, 2008).) The presence of a release does not prevent a court from issuing and All Writs Act Injunction under the relitigation exception to the anti-Injunction Act. In *In re Prudential Insurance Company of America Sales Practice Litigation*, the Third Circuit held that the release signed by class members had "both claim preclusive and issue preclusive effect." 261 F.3d 355, 367 (3d Cir. 2001). Although the release provided a remedy at law, the Third Circuit affirmed the district court's use of its All Writs Act Injunction to prevent "relitigation of the released claims" in state court. *Id.*

The Supreme Court has held that "[t]he relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well-recognized concepts of *res judicata* and collateral estoppel." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988) (emphasis in original). That rule is applicable to this case because Peoples seeks to relitigate the allocation of counsel fees directed by the Court in the *Linerboard* case.

Whenever a litigant is requesting an All Writs Act Injunction under the relitigation exception to the

Anti-Injunction Act, that person necessarily also has the legal remedy of rea judicata. "[A]n essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings have actually been decided y the federal court." Id. At 148. Despite the availability of res judicata, an injunction may still issue under the All Writs Act when it is "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line R.R. Co. v. Locomotive Eng'rs.*, 398 U.S. 281, 295 (1970).

In re Prudential and *Chick Kam Choo* set forth the law applicable to Peoples's argument that an injunction may not issue because Langer possesses an adequate remedy at law. This authority demonstrates that Peoples's argument must fail.

Peoples's actions and statement demonstrate an urgent need for this Court to reinstate the All Writs Act Injunction. Peoples has made it clear that he intends to relitigate the fee dispute in state court if not enjoined form doing so, "Peoples believes he has the right to test his legal claim in a court of proper jurisdiction and he intends to proceed whenever the impediments placed upon him by this Court expire." (Peoples's Resp. to Mot. For Reconsideration, Civ. Action No. 99-1341 (Doc. No. 352, filed Aug. 11, 2008).) Peoples echoed the same sentiment in his interview with *The Legal*

Intelligencer following this Court's July 15, 2008 Memorandum and Order: "Peoples vowed to continue his court battles with Langer, noting that he has instituted suit in the Delaware County Court of Common Pleas in which he intends to pursue what he views as his rightful share of the *Linerboard* fees." Shannon P. Duffy, *Federal Judge Calls Halt to Ugly Fee Dispute, Legal Intelligencer.* July 24, 2008, at 1.

The All Writs Act Injunction is necessary to prevent disturbing the overall allocation of the Linerboard Box Class counsel fees, a result which any litigation of the counsel fee dispute in state court could require. Peoples argues to the contrary in his pleadings, seeking that he is seeking nothing "other than a portion of the fee earned by Howard Langer, Esquire." (Peoples's Resp. to "Notice of New Material Bearing Upon the Pending Mot. To Reconsider" 2 (Doc. No. 1042, filed Sept. 12, 2008).) He contends that is fee request is total[ly] isolat[ed] from any impact upon the fees earned and received by all other counsel." Id. At 3; see also Peoples's Resp. to Mot. For Reconsideration 10 (Civ. Action No. 99-1341, Doc. No. 352, filed Aug. 11, 2008 ("Peoples's claim...[has] absolutely nothing to do with the distribution of the funds owed to the attorneys in the class action")).) These statements are totally undermined by the newly submitted evidence, which, taken together, demonstrates that, directly or indirectly, Peoples's actions will involve the other lawyers who represented the Box Class in *Linerboard* and will seek to disrupt the fee allocations to those lawyers.

Peoples's own submissions and statements demonstrates that he is seeking ten percent of the overall fee paid to the Linerboard Box Class counsel. Although Peoples has not filed a complaint in the pending Delaware County action, Peoples's complaint of December 31, 2007 (withdrawn on January 9, 2008) states repeatedly that Peoples is entitled to ten percent of the overall Box Class counsel fees received in the Linerboard litigation and that the other counsel knew about and agreed to this fee. (Peoples's Compl. ¶¶ 7, 15, 20,45.) Moreover, Peoples argues that, in order to determine how much he is owed, he needs to know how much "everyone....received." (Id. ¶¶ 137-49.)

Moreover, as part of the discovery request of September 3, 2008 in the Delaware County Court case, Peoples included a Brief Statement of Nature of Cause of Action, which states that Peoples is due ten-percent of the entire fee awarded to the Box Class attorneys. (See Langer's Notice of New Material Bearing Upon the Pending Mot. To Reconsider, Ex 1. at 2-3 (Doc No. 1041, filed Sept. 9. 2008).) The interrogatories seek information about both the total amount of the fee received by the Box Class attorneys and the amount that each individual received. (id. At 8-11) Such discovery makes clear that Peoples's state court-litigation will implicate the overall fee allocation to the attorneys for the Box Class.

Peoples state-court suit against Langer directly implicates the res in the MDL-the total

attorney's fees awarded by the Court. Assuming arguendo that Peoples obtains a judgment equivalent to ten percent of the Box Class counsel fee award and recovers the entire amount from Langer, Langer would have a remedy, vis-à-vis the other Box Class counsel which would affect the overall allocation of the counsel fee.

Accordingly, reinstatement of the All Writs Act Injunction is appropriate to prevent relitigation of the overall Linerboard counsel fee allocation in state court and to protect this Court's ongoing jurisdiction over the MDL res.

C. Peoples's Telephone Call of September 16, 2008

On September 16, 2008, Langer, through counsel, sent a letter to the Court, notifying the Court of a telephone call from Peoples, who said, "Your judge buddy is not going to help you out anymore. I hope you know that."[4] Similar telephone calls and telephone messages led to the issuance of two injunctions against Peoples by agreement in 2005. Order of March 22, 2005 (issued but not filed): Order if September 8, 2005 (issued but not filed). The Court dissolved those injunctions on July 15, 2008, largely because Peoples had "not left another telephone message on Langer's voicemail since June 29, 2006 and ha[d] no further contact with Langer. Memorandum and Order of July 15, 2008 (Doc. No. 1024); *In re linerboard Antitrust Litig.*, 2008 WL

[4] A copy of the letter shall be docketed by the Deputy Clerk.

2758442, at *16, *19 (E.D. Pa. July 15, 2008). The most recent letter from Langer's counsel is notice that Peoples has not abandoned his tactic of making threatening telephone messages. Nevertheless, on the present state of the record, the Court declines to reinstate the two agreed-upon injunctions which prohibited such conduct. To the extent that Langer believes the message is threatening and violates the law, he should report the incident to the police.

Previously the Court was asked to refer Peoples to Chief Judge Bartle for disciplinary action based upon the threatening telephone calls. (Langer's Mot. For an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring His Behavior to Chief Judge Bartle (Doc. No. 838, filed July 5, 2006).) The Court declined to do so because, among other reasons, there had been no such telephone calls for over two years. The Court again declines, on the present state of the record, to refer Peoples to Chief Judge Bartle and leaves Langer the question of whether he will do so himself.

V. CONCLUSION

In July 2008, the Court stated that the drawn out personal quarrel between Peoples and Langer must end. The latest round of statements and submissions in the Delaware County Court and in this Court demonstrates that they did not take the Court's admonition seriously. The evidence presented since the issuance of July 15, 2008 Memorandum and Order makes clear something

that had not surfaced as of that date-Peoples seeks to recover from Langer ten percent of the counsel fee allocated to all of the attorneys in the Box Class of *In re Linerboard*. Such action will, directly or indirectly, disrupt the fee allocation to those attorneys and will not be tolerated. The All Writs Act Injunction is necessary to protect the fee allocation and avoid relitigation of that issue.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

IN RE LINERBOARD ANTITRUST LITIGATION	)	MDL No. 1261
THIS DOCUMENT RELATES TO: Civil Action Numbers 98-5055 and 99- 1341	)	

DUBOIS, J OCTOBER 2, 2008

ORDER

AND NOW, this 2nd day of October, 2008, upon consideration of Motions of Liaison Counsel Howard Langer (1) for Reconsideration of the Order of July 15, 2008, (2) for Entry of an Order to Protect and Effectuate This Court's Judgment and (3) Alternatively, to Stay That Portion of the Order of July 15, 2008 Providing for the Dissolution of the All Writs Act Injunction Pending Appeal (Document No. 1025, filed July 21, 2008); Howard Langer's Supplement to Motion to Reconsider the Order Entered July 15, 2008. or Alternatively for a Stay Pending Appeal (Document No. 1026, filed July 23, 2008); Howard Langer's Second Supplement to Motion to Reconsider the Order Entered July 15, 2008, or Alternatively for a Stay Pending Appeal

(Document No 1027, filed July 24, 2008); Howard Langer's Third Supplement to Motion to Reconsider the Order Entered July 15, 2008, or Alternatively for a Stay Pending Appeal (Document No 1028, filed July 28, 2008); John F. Peoples, Esquire's Response to the Motions Filed by Howard Langer, Esquire (Who Refers to Himself Inappropriately as *Liaison Counsel*) (1) for Reconsideration of the Order of July 15, 2008, (2) for Entry of an Order to Protect and Effectuate This Court's Judgment and (3) Alternatively, to Stay That Portion of the Order of July 15, 2008 Providing for the Dissolution of the Court's All Writ's Act Injunction Pending Appeal (Civil Action 99-134, Document No. 352, filed August 11, 2008); Howard Langer's Notice of New Material Bearing Upon the Pending Motion to Reconsider (Document No. 1041, filed September 9, 2008); John F. Peoples's response to the "Notice of New Material Bearing Upon the Pending Motion to Reconsider" (Document No.1042 filed September 12, 2008): Howard Langer's Motion for a Temporary Restraining Order and Preliminary Injunction (Document No. 1043, filed September 12, 2008) and John F. Peoples's Response to the Motion for a Temporary Restraining Order and Preliminary Injunction (Document No. 1044, filed September 29, 2008) for the reasons set forth in the attached Memorandum, IT IS ORDERED as follows:

1. Motion of Liaison Counsel Howard Langer for Reconsideration of the Order of July 15, 2008 (Document No. 1025, filed July 21, 2008) is GRANTED;

2. Motion of Liaison Counsel Howard Langer for Entry of an Order to Protect and Effectuate This Court's Judgment (Document No. 1025, filed July 21, 2008) is DENIED AS MOOT;
3. Motion of Liaison Counsel Howard Langer to Stay That Portion of the Order of July 15, 2008 Providing for the Dissolution of the All Writs Act Injunction Pending Appeal (Document No. 1025, filed July 21, 2008) is DENIED AS MOOT;
4. Howard Langer's Motion for Temporary Restraining Order and Preliminary Injunction (Document No. 1043, filed September 12, 2008) is DENIED AS MOOT.

IT IS FURTHER ORDERED as follows:

1. The deputy clerk shall docket the letter from Robert J. LaRocca, Howard Langer's counsel, of September 16, 2008.
2. The All Writs Act Injunction (Document No. 408, filed July 6, 2004) is REINSTATED

The Court having retained jurisdiction over MDL 1261 "including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel" by Order dated June 4, 2004, IT IS FURTHER ORDERED that all attorneys who participated in any way in MDL 1261 including, but not limited to, John F. Peoples, Esquire, and all persons acting in their

behalf, are hereby ENJOINED from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court of forum other than the United States District Court for the Eastern District of Pennsylvania. The injunction is necessary to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261. See *In re Synthroid Marketing Litigation*, No. 97-6017 (N.D. III. Aug.22, 2003).

BY THE COURT
/s/ JAN E. DUBOIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

IN RE LINERBOARD ANTITRUST LITIGATION	)	MDL No. 1261
THIS DOCUMENT RELATES TO: Civil Action Numbers 98-5055 and 99-1341	)	

DUBOIS, J. JULY 14, 2008

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MEMORANDUM

I. INTRODUCTION

Plaintiff, John F. Peoples ("Peoples"), filed a Motion to Recuse under 28 U.S.C. §§ 455(a) and 455(b) on May 12, 2008. A Supplemental Motion to Recuse was filed on July 5, 2008. The Motions seek "an Order by the Court Recusing the Honorable Jan E. DuBois from acting in the future in a judicial capacity in the above captioned case . . . ." (Pl.'s Mot. to Recuse 2.) They are based, *inter alia*, on "an appearance of bias and partiality resulting from" an alleged "special relationship" between Howard Langer, an attorney in *In re Linerboard* Antitrust Litigation[1], and the Court. (Pl.'s Mot. to Recuse ¶ 1; Pl.'s Br. in Supp. of Mot. ¶ 31.) According to the Motions, the alleged special relationship arises out of the appointment of Howard Langer, Esquire ("Langer"), as liaison counsel in the *In re Linerboard* Antitrust Litigation, MDL 1261. (Pl's Mot. to Recuse ¶ 1.) In the proposed Order attached to the Motion to Recuse, Peoples seeks the reassignment of Civil Action No. 04-2785, to another judge of this Court. For the reasons stated below, plaintiff's Motion to

[1] Howard Langer was appointed liaison counsel for the class-action plaintiffs in *In re Linerboard Antitrust Litigation*, MDL No. 1261, by Case Management Order dated November 9, 2000. The relationship between Peoples v. Langer and *In re Linerboard* is discussed in the Background section of this Memorandum.

Recuse and Supplemental Motion to Recuse are denied.

II. BACKGROUND

Currently before the Court, in addition to the pending Motions to Recuse, are numerous Motions relating to a dispute between Peoples, an attorney, and Howard Langer ("Langer") over a referral fee in the underlying *Linerboard Antitrust Litigation*, MDL 1261. After the *Linerboard* class action was settled, Peoples filed an action against Langer in the Court of Common Pleas of Philadelphia County in which he sought a referral fee. That action was removed to federal court and docketed as Civil Action No. 04-2785. It was settled for $2.92 million following extensive conferencing before United States Magistrate Judge Thomas J. Rueter. The case was dismissed with prejudice on November 16, 2004, by agreement of the parties pursuant to Local Civil Rule 41.1(b).

The proposed order appended to the Motion to Recuse provides that "case Number 04-cv-2785 and all associated Pleadings and actions taken by the Court are re-assigned to the Clerk of the United States District Court for the Eastern District of Pennsylvania for the purpose of reassignment to another Jurist within the Court." What Peoples seeks is recusal in a case that was dismissed almost four years ago. The only pending case involving Peoples - the case in which all of the Motions were filed, or should have been filed - is *In re Linerboard Antitrust Litigation*, MDL 1261.

A. Other Pending Motions

The first filed of the other pending motions is Howard Langer's Motion for an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring his Behavior to Chief Judge Bartle for an Order to Show Cause Why He Should Not Be Suspended From Practice and Request for Expedited Hearing. Hearings were held on that Motion on March 16, 2007, May 3, 2007, and May 4, 2007. On February 22, 2008, Langer filed a Second Motion for an Order to Show Cause Why John Peoples and the Law Office of John Peoples Should Not Be Held In Further Contempt for Initiating a Law Suit in Delaware County In Violation of the All Writs Act Injunction. Five motions pertaining to the initial Motion for Contempt are also before the Court: (1) Motion of Howard Langer, Esquire, and Langer & Grogan, P.C. to Stay the Peoples's Action; (2) John Peoples' Motion to Dismiss the Complaint[2]. Pursuant to Federal Rule of Civil Procedure Rule 12(b)(1); (3) John Peoples' Motion to Dismiss and Reference to a TRO Which Was Entered Improperly After the Case Was Dismissed With Prejudice;[3] (4) a Cross Motion

[2] There is no "complaint" currently before the Court in this matter. The Peoples motions to dismiss all pertain to the Motion for Contempt.

[3] Peoples' counsel, Frank Marcone, incorrectly filed these motions in Civil Action No. 04-2785, rather than in MDL No. 1261. By Order dated June 1, 2007, the Court directed the Clerk of Court to correctly docket Peoples' filings in MDL No. 1261.

by Howard Langer to Strike Peoples' Proposed Findings of Fact, Conclusions of Law and the Memorandum of Law in Support of the Motion to Dismiss; and, (5) John Peoples's Motion to Compel.

This Memorandum covers Peoples's recusal motions. The Court will rule on all other Motions in a separate opinion. Suffice it to say for purposes of this Memorandum that the initial Motion for Contempt arises out of an allegedly threatening telephone message left by Peoples on Langer's voicemail in violation of agreed-upon restraining orders which prohibited Peoples from contacting Langer. The allegedly threatening telephone message related to Peoples's displeasure with the $2.92 million settlement of his claim against Langer. That part of the initial contempt motion which seeks a referral of Peoples's behavior to Chief Judge Bartle for an order to show cause why he should not be suspended from practice is based on the alleged threatening telephone call and the telephone calls from Peoples that led to the issuance of the agreed-upon restraining orders. Langer also argues that disciplinary sanctions and referral to Chief Judge Bartle are appropriate because, during the Contempt Hearing, Peoples falsely "testified to serious judicial improprieties" by the Court. (Lead Counsel's Mem. on Potential Disciplinary Violations, Document No. 924, at 3.) The remaining Motions relate to Peoples's claim that this Court lacked jurisdiction over his fee dispute with Langer, Civil Action No. 04-2785. A more detailed statement of the facts relating to all such issues and the Court's ruling on all such issues will be included in the separate opinion.

B. Peoples's Petition for Writ of Mandamus

On August 30, 2007, Peoples filed a Petition for Writ of Mandamus in the Court of Appeals for the Third Circuit. In that Petition, Peoples sought an order declaring that this Court had no jurisdiction over the fee dispute between Peoples and Langer, and vacating all prior orders issued in that case, Civil Action No. 04-2785. The Petition for Writ of Mandamus was denied by Order of the Court of Appeals dated October 16, 2007. A Petition for Rehearing Before the Court En Banc was thereafter denied by Order dated February 12, 2008. No opinions were written by the Court of Appeals in connection with those Orders.

C. Recusal Motions

It is necessary to detail some of the history of the tangled dispute between Peoples and Langer in order to put the recusal motions in context. A summary of that history follows:

1. Langer's Role In the *Linerboard* Antitrust Class Action

By Practice and Procedure Order issued October 4, 2000, counsel for each group of parties whose interests were similarly aligned were directed to designate liaison counsel, subject to the approval of the Court. At a case management conference held on November 9, 2000, Langer was designated by

counsel for the plaintiff class as liaison counsel for the class. By Order dated November 9, 2000, the Court approved that appointment and the appointment of Ralph G. Wellington and Sherry A. Swirsky as liaison counsel for defendants. The duties of liaison counsel were set forth in the Court's October 4, 2000 Practice and Procedures Order, paragraph 7, as follows:

> Liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request. Liaison counsel are also authorized to receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to Rule 8(e) of the Panel's Rules of Procedure on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group.

(Practice and Procedures Order of Oct. 4, 2000, ¶ 7.)

The designation and appointment of liaison counsel and the duties of liaison counsel set forth above were all in accordance with the *Manual for Complex Litigation*, 3d, issued by the Federal Judicial Center.

2. The *Linerboard* Class Action Settlement and Fee Allocation

On March 21, 2004, the Court granted final approval of the last two partial settlements of the class-action component of MDL 1261. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631 (E.D. Pa. 2003). With the Court's approval of these "settlements, all claims in the class action were resolved for a total of $202,572,489." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004).

On June 2, 2004, the Court awarded "a counsel fee of 30 percent of the total settlements of $202,572,489 ("Settlement Fund") to all counsel *with allocations to specific firms to be made by liaison counsel, Howard Langer, Esquire* . . . ." Order of June 2, 2004 (emphasis added); see also *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004) (concluding "that consideration of the seven Gunter factors counsels in favor of awarding petitioners their requested fee"). Langer allocated two million dollars to Peoples for his contribution to the case.[4] Peoples, May 3, 2007

[4] As the Court explained in *In re Linerboard Antitrust Litig.*, 2004 WL 1221350 (E.D. Pa. June 2, 2004), Langer

Tr. at 27. According to Peoples, he "made it very clear [to Langer] that I [Peoples] was going to get very angry if he didn't come up with more money." *Id.*

By Order dated June 4, 2004, the Court amended the Order of June 2, 2004 to include, *inter alia*, the following language: "the Court RETAINS jurisdiction over this case including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action." *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, *1 (E.D. Pa. June 4, 2004). The Court has on several other occasions explicitly retained jurisdiction over matters related to the distribution of the Settlement Fund. See, e.g., *In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 344 (E.D. Pa. 2004) ("The Court retains continuing jurisdiction over this matter including jurisdiction over the Settlement Fund and its distribution, the Funds to

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> was approached by an attorney representing a purchaser of boxes from Stone who asked if liaison counsel would research the possibility of bringing an action on behalf of purchasers of corrugated boxes from Stone. That lawyer, John Peoples, had approached other antitrust lawyers with his client's claim but they all had declined to pursue the matter. Liaison counsel concluded that *In re Sugar Industry Antitrust Litig.*, 570 F.2d 13, 19 (3d Cir. 1978) provided a viable, if unused (in the class action context), exception to *Illinois Brick* under which suit could be instituted against Stone.

Id. at *6.

be distributed pursuant to this Order, as well as all issues relating to the fees and costs of counsel in this action.").

3. Peoples' Lawsuit

On June 23, 2004, Peoples filed a Complaint in the Court of Common Pleas of Philadelphia County. In his Complaint, Peoples alleged that he was entitled to four million dollars in attorney's fees from the settlement of the box class-action component of MDL 1261, as well as punitive damages and attorney's fees. Peoples' Compl. ¶ 49. He asked the court to order Langer "to, first, escrow $6 million pending the final outcome of the litigation and . . . upon such final outcome of the litigation, to pay over to Plaintiff said $6 million . . . ." Peoples' Compl.¶ 67.

On June 24, 2004, Langer removed the Peoples case to the United States District Court for the Eastern District of Pennsylvania. The Notice of Removal stated that

> Plaintiff's Complaint seeks a constructive trust on attorneys' fees awarded in a class action entitled In re Linerboard Antitrust Litigation, MDL No. 1261. Plaintiff has also sought a preliminary and permanent injunction with respect to such fees. The allocation of those attorneys' fees is currently pending in this Court before the Honorable Jan E. DuBois. This Court has and is currently

> exercising jurisdiction over the res that is the subject matter of the constructive trust and injunction sought by plaintiff, namely, the common fund generated by the *Linerboard* settlements.

Notice of Removal ¶2. This case was captioned *John F. Peoples v. Howard Langer, Esq. And Langer & Grogran, P.C.*, Civil Action No. 04-2785.

By Order dated July 6, 2004, issued pursuant to the All Writs Act ("All Writs Act Injunction"), the Court enjoined "all attorneys who participated in any way in MDL 1261 including, but not limited to, John F. Peoples, Esquire, and all persons acting in their behalf . . . from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania."[5] The Court stated that the injunction was "necessary to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261." Order of July 6, 2004 (citing *In re Synthroid Mktg.Litig.*, Civil Action No. 97-6017 (N.D. Ill. Aug. 22, 2003)).

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[5] The order was without prejudice "to the right of John F. Peoples, Esquire, or any other party to seek a remand of any case pending in this District which concerns the allocation of counsel fees in MDL 1261, or the actions of liaison counsel in connection therewith." Order of July 6, 2004

By Order dated September 27, 2004, upon the joint request of the parties for mediation, the Court referred Peoples v. Langer, Civil Action No. 04-2785, to United States Magistrate Judge Thomas J. Rueter for settlement conferences. After several conferences before Judge Rueter, Peoples and Langer reached a settlement agreement on December 22, 2004. ("Settlement Agreement"). The Settlement Agreement provided that, "[i]n the full and final settlement of Mr. Peoples' claims set forth in the Action against Mr. Langer . . . , Mr. Langer shall cause to be paid to Mr. Peoples from the amount awarded as counsel disciplinary complaint against Mr. Langer, he neither has nor knows of any ground for such a complaint." (Settlement Agreement ¶ 6.) By Order dated November 16, 2004, "it having been reported that the issues between the parties in the above action have been settled," the Court dismissed Peoples v. Langer, No. 04-2785 with prejudice pursuant to Rule 41.1(b) of the Local Rules of Civil fees in MDL 1261 . . . the sum of $2,940,000." (Settlement Agreement ¶ 2.) The Settlement Agreement also provided as follows: "Mr. Peoples specifically states that, notwithstanding a statement he made concerning a possible Procedure of this Court.

III. JURISDICTION OVER CIVIL ACTION NO. 04-2785

In his pending Motions to Dismiss, Peoples argues that this Court lacks jurisdiction over his fee dispute case against Langer, Civil Action No. 04-2785. Because the jurisdiction issue will be covered in a separate memorandum deciding all of the other pending motions, the Court does not deem it necessary to address that issue in detail in this Memorandum, except to point out the following:

The jurisdiction issue was squarely presented to the Court of Appeals in Peoples's Petition for Writ of Mandamus. In that Petition, Peoples asked the Court, *inter alia*, to vacate all orders issued in his fee dispute case with Langer, Civil Action No. 04-2785, and remand the case to the Court of Common Pleas of Philadelphia County on the ground that this Court had no jurisdiction over the fee dispute. The Petition was denied by Order dated October 16, 2007, and a Petition for Rehearing Before the Court En Banc was denied on February 12, 2008. Although no opinions were written by the Court of Appeals, those rulings, in essence, affirmed this Court's determination that it had jurisdiction over the Peoples fee dispute.

A reading of Peoples's filings would leave one with the impression that Peoples's fee dispute with Langer affected only Langer, and had nothing to do with the fee awarded by the Court in the *Linerboard Antitrust Litigation*, MDL 1261, and the attorneys to whom Langer allocated portions of the fee, but that

is not so. To the contrary, Peoples's Complaint asked the Court to order Langer "to, first, escrow $6 million pending the final outcome of the litigation and. . . upon such final outcome of the litigation, to pay over to Plaintiff said $6 million . . . ." Peoples's Compl. ¶ 67. At the time Peoples's Complaint was filed, that precise issue – the allocation of attorneys fees awarded in the class action component of MDL 1261 - was before this Court.

The Court concluded that supplemental or ancillary jurisdiction over the Peoples's fee dispute was necessary to protect the continued integrity of the Court. That determination was based on the well established principle that federal courts may assert "ancillary" or "supplemental" jurisdiction for "two separate, though sometimes related purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 380 (1994).

In his Motion to Recuse, Peoples makes reference to a letter from retired Chief Judge Louis C. Bechtle in which Judge Bechtle expressed the opinion that Peoples's fee dispute should have been remanded to the Court of Common Pleas of Philadelphia County. (Pl.'s Mot. to Recuse ¶ 11; Pl.'s Br. In Supp. Of Mot. ¶ 13.) The short answer to that argument is that the issue of remand is not a subject on which an expert opinion is appropriate. Moreover,

and significantly, Peoples stated that he provided to Judge Bechtle only the pleadings in his case against Langer. (Pl.'s Br. in Supp. of Mot. ¶ 13.) That was insufficient to enable Judge Bechtle or anyone else to understand the relationship between Peoples' Complaint, filed June 23, 2004, which demanded that ten percent of attorneys fees in *In re Linerboard* be escrowed, and what was happening in *In re Linerboard* at the same time – implementation of the Orders of June 2, and 4, 2004, directing Langer, as liaison counsel, to allocate the attorneys fee of 30% of the settlement fund to the more than 200 attorneys who participated in the case.

Finally, the Court notes that its jurisdiction in this case will end upon the termination of the class action phase of MDL No.1261. What remains for adjudication in the class action component of MDL No. 1261 is approval of the Final Report of the Claims Administrator, and an order disposing of the excess class action settlement funds. The Court will rule on such matters in a separate memorandum and order upon receipt of a supplemental report from the Claims Administrator.

The Court next turns to the issues presented by People's Motions for Recusal.

IV. LAW OF RECUSAL

A. 28 U.S.C. § 455(a)

Section 455(a) requires a federal judge to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). It is a "catchall disqualification provision" covering situations in which a judge can be viewed as having a "bias or prejudice" concerning a party, a relationship to a party, or an interest in the litigation. See *In re Kensington Int'l Ltd.*, 353 F.3d 211, 220 (3d Cir. 2003) (citing *United States v. Liteky*, 510 U.S. 540, 548 (1994)). In conducting a § 455(a) analysis, "the appearance of impropriety must be viewed from the perspective of the objective, reasonable layperson . . . ." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 303 (3d Cir. 2004). If "a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality . . . . then the judge must recuse." *In re Prudential Ins. Co. of America Sales Practices Litigation*, 148 F.3d 283, 343 (3d Cir. 1998).

B. 28 U.S.C. § 455(b)

In contrast to § 455(a), § 455(b) lists specific circumstances under which a judge "shall also disqualify himself." 28 U.S.C. § 455(b)(1) (5).[6] One

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[6] The full text of § 455(b) reads:

> [A judge] shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of

such provision, § 455(b)(1),[7] requires recusal where a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. §455 (b)(1)

> disputed evidentiary facts concerning the proceeding;
> (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> > (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

[7] Plaintiff does not state specifically which provision(s) he relies upon under § 455(b) but it appears to be § 455(b)(1). In his Motion, he explains the difference between § 455(a) and § 455(b)(1). (Pl.'s Mot. to Recuse 14.) He does not cite other provisions under § 455(b).

C. Sections 455 (a) and 455(b)(1) and the Extrajudicial Source Doctrine

In analyzing claims under §§ 455(a) and 455(b)(1), courts generally have applied what has come to be known as the "extrajudicial source doctrine." See *Liteky*, 510 U.S. at 546, 549 (listing cases). Under that doctrine, recusal is required only where "the alleged bias and prejudice . . . stem[s] from an extrajudicial source," meaning a source outside the judicial proceedings. See *id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)). In *Liteky*, a party challenged the application of the extrajudicial source doctrine to § 455(a), claiming that, under that part of the statute, recusal is required "*whenever* there exists a genuine question concerning a judge's impartiality, and not merely when the question arises from an extrajudicial source." *Id.* at 552 (emphasis in original). The Supreme Court rejected that challenge and held that the extrajudicial source doctrine applies to both §§ 455(a) and 455(b)(1). However, the *Liteky* Court also clarified the reach and scope of the doctrine. See *id.* at 554-55.

The Supreme Court in *Liteky* held that while an extrajudicial source may be a practical necessity for establishing prejudice or bias, "[i]t is wrong . . . to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing bias or prejudice." Id. at 551. The Court stated that a "favorable or unfavorable predisposition" that

"springs from the facts adducedor the events occurring at trial" can also be characterized as bias or prejudice. *Id.* However, to warrant recusal, that judicial "disposition" must be "so extreme as to display clear inability to render fair judgment." *Id.* Put another way, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings," will constitute a basis for a bias or partiality motion only if "they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 555 (emphasis added); see also *id.* at 556 (rephrasing latter part of standard as requiring "deep-seated and unequivocal antagonism that would render fair judgment impossible").

> Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* (emphasis in original).

The *Liteky* Court further stated that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion" because "in and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show

reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . ." *Id.* At 55.

Finally, the *Liteky* Court stated that even where an extrajudicial source or "factor" is implicated, recusal is not warranted unless a judge's "disposition or opinion . . . is . . . wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree . . . ." *Id.* at 550.

V. DISCUSSION

The Court groups Peoples's arguments for recusal into three categories: (A) the appointment of Langer as liaison counsel in *In re Linerboard*; (B) judicial rulings, practices, and other actions throughout the course of the proceedings; and (C) statements and actions by Langer and others.

A. Appointment of Howard Langer as Liaison Counsel in *In re Linerboard*

Peoples's main argument, one that he repeats throughout his Motions and the brief in support of the Motion to Recuse, is that Howard Langer and the Court share a "close," "special," an "unacceptable" relationship. (Pl.'s Mot. to Recuse ¶¶ 1, 2; Pl.'s Br. in Supp. of Mot., "Applicable Facts" Section, ¶ 11, 31.) Plaintiff contends that the "relationship" "developed due" to this Court "appointing Langer as Liaison Counsel" in *In re*

Linerboard, and that it has provided "more than the 'appearance' of bias and partiality which by statute requires recusal." (Pl.'s Mot.to Recuse ¶ 1; Pl.'s Br. in Supp. of Mot. ¶ 5.)[8] Moreover, plaintiff argues that as Liaison Counsel, Langer exercises "direct influence" over the Court. (Pl.'s Br. in Supp. of Mot. ¶ 15.) In support of this argument, plaintiff cites *In re Kensington Int'l Ltd.*, which he claims "bears many similarities" to this case. (Pl.'s Br. 13-14). That statement is incorrect.

The Kensington case has absolutely no bearing on this case. In *Kensington* the district court appointed "Court Appointed Consultants" to assist that court in a consolidated asbestos-related bankruptcy litigation. 368 F.3d at 297. The consultants were given very broad powers by the district court, including, among other things, the power to advise the district judge, mediate disputes, hold case management conferences, and consult with attorneys. Id. at 308. One consultant likened the powers that he exercised to those of a magistrate judge. *Id.* The consultants in Kensington could also be delegated authority to hear matters and to advise the Court on issues. See *Kensington*, 353 F.3d at 215.

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[8] Arguments relating to the Court's appointment of Langer as Liaison Counsel, or the "relationship" which developed as a result of that appointment, are repeated in Pl.'s Mot. To Recuse ¶¶ 1, 2, 9, and 24(1); Pl.'s Br. in Supp. of Mot. ¶¶ 3-5; and "Applicable Facts" Section of Pl.'s Br. ¶¶ 10, 11, 15, 18, 25, 29, 30, and 50.

The problem in *Kensington* arose when it was discovered that, that at the time they were advising the district court, two of the consultants "represented a class of tort claimants in another, unrelated asbestos-driven bankruptcy and espoused views therein on the same disputed issues" that were at the core of the *Kensington* case. 368 F.3d at 302. The Third Circuit determined that these consultants operated under a structural conflict of interest, and granted the creditors' petition to disqualify the district judge from further proceedings over their cases. Id. at 303.

The *Linerboard Antitrust Litigation* stands in stark contrast to Kensington. Liaison counsel for the plaintiffs and the defendants in *Linerboard* had virtually no power, let alone the "very broad power" that was at issue in *Kensington*. They did not advise the court, mediate disputes, or hold case management conferences, and their authority was nothing like that exercised by a magistrate judge. To the contrary, the principal role of liaison counsel in *Linerboard* was to act as a liaison between their groups of parties and the court, and to assist the court in case management.

Peoples claims that the Court conducted *ex parte* meetings with Langer in *In re Linerboard* or in *Peoples v. Langer*. That is absolutely false. All meetings or discussions with liaison counsel which were related to *In re Linerboard* included all liaison counsel and, significantly, any other attorneys who chose to participate. With regard to *Peoples v.*

Langer, there were no *ex parte* meetings with Langer or anyone else.

Peoples argues that the Court's appointment of Langer as liaison counsel "began the creation of an appearance of partiality and formed the basis for this Motion requiring recusal." (Pl.'s. Br. Applicable Facts ¶ 10). That argument ignores the appointment process utilized by the Court. Langer was designated as liaison counsel by counsel for the plaintiff class. See Practice and Procedure Order dated October 4, 2000, ¶ 7. The Court approved that designation by Order dated November 9, 2000.

The Third Circuit has recognized that in "cases involving allegations of bias derived from judicial proceedings," which this is, "biases . . . must be particularly strong." See *United States v. Antar*, 53 F.3d 568, 574 (3d Cir. 1995) (overruled on other grounds); *In re Prudential*, 148 F.3d at 343 (same) . For example, in *United States v. Antar*, in which court concluded that recusal was required, the court found that it was "difficult to imagine a starker example of when opinions formed during the course of judicial proceedings display a high degree of antagonism against a criminal defendant." 53 F.3d." 28 U.S.C. § 455(b)(1). C. Sections 455(a) and 455(b)(1) and the at 576. At issue in that case was a district judge's comment at sentencing that his "object . . . from *day one*" in a securities fraud case was to "get back to the public that which was taken from it as a result of the fraudulent activities" of defendants. *Id.* at 573 (emphasis added). The court determined that the judge's statement required

recusal under § 455(a) because, under the circumstances, a reasonable person with knowledge of the facts could conclude "that the judge had an improper goal" in the criminal proceeding. *Id.* at 579. Failure to recuse in that case had "the appearance of affecting the fairness and integrity of the trial." *Id.*

In *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155 (3d Cir. 1993), the Third Circuit disqualified a district judge after concluding that the outcome of the underlying case "'would be shrouded [in] suspicion' if [the judge] were to continue to preside as trier of the fact[s]." 10 F.3d at 163 (quoting *In re School Asbestos Litigation*, 977 F.2d 764, 785 (3d Cir. 1992)). Like *Antar, Alexander* presented particularly strong facts that could have led a reasonable person to question the judge's impartiality. The judge in *Alexander*, an ERISA class action, made observations "throughout the conduct of [the] proceedings," that "strong[ly] indicat[ed]" that he had prejudged the case. *Id.* at 164. Moreover, the judge made comments that "petitioners' witnesses may have committed perjury . . . without having heard all of the testimony . . . ." *Id.* Similarly, in a written opinion, the judge "accused petitioners of acting in bad faith . . and of abusing the judicial process . . . despite an absence of record evidence." *Id.* Finally, in response to petitioners' motion for recusal, the judge drafted a "letter opinion" in which he "forcefully" and "personally refuted petitioners' 'incomplete or inaccurate summaries' of his comments and opinions." *Id.*

For all of these reasons, the Court of Appeals determined that the district court judge's impartiality might reasonably be questioned. *Id.* at 164-65; see also *id.* at 165 (stating that judge's response to petition could be misinterpreted by a reasonable person as an attempt to align himself with respondents).

Unlike *Antar* and *Alexander,* Peoples presents no facts which would warrant recusal. The designation of Langer as liaison counsel by counsel for the plaintiff class in *Linerboard* and approval of that designation by the Court does not evidence "deep-seated favoritism or antagonism" towards any party. *Liteky*, 510 U.S. at 555. Nor does the Court's treatment of Peoples evidence deep-seated favoritism toward Langer or antagonism toward Peoples. Peoples does not present any evidence that the Court prejudged his claims or made statements indicating prejudgment, because there is no such evidence. Likewise, the Court has not accused Peoples of bad acts or made any statements that could be considered accusations against him. And, in appointing Langer as liaison counsel, the Court did not "align" itself with any party. That appointment of Langer and that "relationship" to him provides absolutely no basis for recusal.

B. Judicial Rulings, Practices, and Other Actions

Plaintiff alleges that the Court has "evidenc[ed] bias" in favor of Langer through its rulings and other actions. (Pl.'s Br. 12.) At the

outset, the Court notes that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. The Supreme Court has stated that "[a]lmost invariably, [a judge's rulings] are proper grounds for appeal, not for recusal." *Id.* Moreover, the Third Circuit has held that "a party's displeasure with legal rulings does not form an adequate basis for recusal." *Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000) (citing *In re TMI Litig.*, 193 F.3d 613, 728 (3d Cir. 1999)). With these standards in mind, the Court addresses plaintiff's arguments regarding its rulings and other actions.

1. Decisions and Actions By the Court

In an Order dated July 6, 2004, upon motion by Langer for an All Writs Act injunction, the Court enjoined all attorneys who participated in any way in MDL 1261, including plaintiff, from taking "any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania." (See Order of July 6, 2004.) The Order explained that the injunction was necessary "to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261." *Id.* Peoples contends that the injunction "'protected' Langer from a legitimate claim" and provides "evidence requiring recusal." (Pl.'s Br., Applicable Facts Section ¶¶ 16-17.)

Similarly, Peoples argues that a separate order which instructed all parties to file future filings under MDL No. 1261, issued on May 31, 2007, after the Peoples case was terminated was "completely without basis," and that "[t]hat act alone would require subsequent recusal based upon bias in favor of liaison counsel." (Pl.'s Br. in Supp. of Mot. ¶ 10.)

The law on recusal does not support plaintiff's claims. Neither of the above-referenced orders displayed a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555. The orders simply directed actions that were necessary to the Court's administration of *In re Linerboard*. Peoples's argument that it was appropriate to continue filing documents in Civil Action No. 04-2785 years after that action was dismissed with prejudice on November 16, 2004, is, quite simply, absurd. To the extent that Peoples disagrees with the legal bases for the Court's rulings, he may appeal to the Third Circuit. See *id.*

In addition to the above claims, Peoples suggests that the Court has demonstrated bias by "tak[ing] seriously" allegations of threats against Langer by plaintiff and by "attempt[ing] to cite [plaintiff]" for contempt of a Court order that has "never been made part of a record." (Pl.'s Mot.to Recuse ¶¶ 18-20.) He also asserts that the Court "permitted Langer to accuse Peoples of actions which he classified as warranting 'disbarment' but was unable to cite to an applicable violation of the Code or Professional Responsibility." (Pl.'s Br. 13.) Suffice

it to say in response that the contempt motions which address those issues have not yet been decided. The Court delayed ruling on those motions in the mistaken belief that the parties would be able to resolve their dispute. It will shortly rule on all such motions and related motions in a separate opinion.

2. Alleged Delay and Inaction

Peoples also alleges that the Court's "delay" in responding to his motions demonstrates bias, or the appearance of bias, warranting recusal. (See Pl.'s Br. 17.) Specifically, he alleges that the Court has "never decided" or "addressed" his Motion for Remand, which was filed July 9, 2004 (Pl.'s Br. Applicable Facts ¶¶ 13, 21), or his Motion to Dissolve the All Writs Act Injunction, which was filed July 12, 2004 (Pl.'s Br. Applicable Facts ¶ 22). By way of proof, Peoples asserts that the alleged "lengthily [sic] delay" is inconsistent with this Chambers' "usual speed" and that the delay can only be explained by "the appearance of bias and prejudice." (Pl.'s Br. 17.) In fact, the Motions to which Peoples points have been addressed. By Order dated November 16, 2004, the Court denied those and other motions as moot, after the parties reported the case settled.

As for plaintiff's claim that recusal is warranted because, generally speaking, the Court has let his case "languish," the claim has no merit. (See Pl.'s Br., Applicable Facts ¶¶ 26, 41.) Peoples's case was settled and dismissed with prejudice under

Local Civil Rule 41.1(b) on November 16, 2004. Any delay after the filing of the first contempt motion was caused by the Court's decision to give the parties an opportunity to resolve their dispute. In addition, there was delay related to the filing by Peoples of a Petition for Writ of Mandamus to the Third Circuit and, after that Petition was denied, the filing of a Petition for Rehearing which was denied.

C. Statements and Actions by Langer and Others

Finally, Peoples bases his recusal motions on certain actions and statements made, not by this Court, but by Howard Langer. In relation to Langer, plaintiff has alleged the following:

1. That Langer "proposed that he had exclusive unilateral communications with Judge DuBois through both direct telephone discussions as well as personal discussions. He also had made it known to Peoples that his unique position with Judge DuBois will impact unfavorably upon Peoples should Judge DuBois control the dispute between Peoples and Langer over the fee owed by Langer." (Peoples. Mot. to Recuse ¶ 9; see also Pl.'s Br. 15 (claiming that Langer has "bragged" about "exparte [sic] communications" with the Court)).

2. That Langer "addressed himself in his pleadings" as Liaison Counsel and that "[t]hat reference alone created an appearance of bias and prejudice requiring recusal." (Pl.'s Mot. To Recuse ¶ 18.)

3. That Langer, in arguing that this Court had jurisdiction over the Peoples matter,"never cited authority for continuing control of a non litigant after all actions by the Court were closed," thus "[g]iving further appearance of bias and prejudice." (Pl.'s Mot. to Recuse ¶ 23.)

4. That Langer "sought 'removal' relief from Judge Dubois, with whom he admitted he enjoyed a close relationship. This alone gave rise to an appearance of partiality, warranting recusal." (Pl.'s Mot. to Recuse, Applicable Facts ¶ 14.)

5. That Langer has "admitted to a conflict with having Judge DuBois hear any of the issues in this case due to his close relationship with Judge DuBois." (See Pl.'s Br., Applicable Facts ¶¶ 28-30.)

A short answer to the above claims by Peoples is that, with the exception of the reference to Langer as liaison counsel, Langer denies the allegations. The Court had absolutely no relationship whatsoever with Langer other than that arising from the approval of his designation as liaison counsel in the *In re Linerboard Antitrust Litigation*. Moreover, the Court played only a peripheral role in the resolution of Peoples's case against Langer. For the most part, that case was handled by United States Magistrate Judge Thomas J. Rueter who was successful in settling it for $2.92 million.

With respect to statements allegedly made by others, Peoples argues that "[i]t began to appear the

opinions expressed by other lawyers that Judge DuBois was expressing favoritism to Howard Langer, Esquire, was correct." (Pl.'s Mot. to Recuse, p. 4, ¶ 12.) Those other lawyers were identified by Peoples, and at an Evidentiary Hearings conducted in May, 2007, they testified under oath to the contrary. (See May 4, 2007 Evid. Hr'g Tr. at 16, 46.) Plaintiff's allegations relating to Langer and other individuals do not require recusal under §§ 455(a) or 455(b)(1). The allegations reflect no "personal bias or prejudice" on the part of the Court, nor do they establish "personal knowledge of disputed evidentiary facts." 28 U.S.C. § 455(b)(1). Similarly, the allegations do not speak to any opinion, remark or other action taken by the Court. Moreover, it cannot be said that recusal is required under § 455(a) because a reasonable person, with knowledge of all of the facts, would not "harbor doubts about the *judge's* impartiality." *In re Prudential*, 148 F.3d at 343 (emphasis added); cf. *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 168 (3d Cir. 2004) (explaining that a written statement by a *litigant* is of "little probative value with respect to whether a reasonable person, knowing all the circumstances, would question [the *judge's*] impartiality") (emphases added).

VI. CONCLUSION

Plaintiff argues that the Court's rulings, practices and other actions which occurred in the course of the *In re Linerboard Antitrust Litigation* warrant recusal. In *Liteky*, the Supreme Court ruled that where "judicial rulings, routine trial administration efforts, and ordinary admonishments

. . . to counsel and to witnesses," did not rely upon knowledge acquired outside of judicial proceedings, and did not display a "deep-seated and unequivocal antagonism that would render fair judgment impossible," recusal was not warranted. 510 U.S. at 556. This Court's actions have not displayed any favoritism toward Langer or antagonism toward Peoples. Moreover, no "reasonable person, with knowledge of all the facts, would conclude that [this Court's] impartiality might reasonably be questioned." *In re Kensington*, 368 F.3d at 301. Accordingly, for all of the reasons set forth in this Memorandum, plaintiff's Motion to Recuse Pursuant to 28 U.S.C. §§ 455(a) and 455(b) and Supplemental Motion to Recuse are denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

IN RE LINERBOARD ANTITRUST LITIGATION	) MDL No. 1261
THIS DOCUMENT RELATES TO: Civil Action Number 98-5055 and 99-1341	)

DUBOIS, J. JULY 15, 2008

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MEMORANDUM

I. INTRODUCTION

Currently before the Court is Howard Langer's Motion for an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring his Behavior to Chief Judge Bartle for an Order to Show Cause Why He Should Not Be Suspended From Practice and Request for Expedited Hearing (Document No. 838, filed July 5, 2006). Five motions pertaining to the Motion for Contempt are also before the Court: (1) Motion of Howard Langer, Esquire, and Langer & Grogan, P.C. to Stay the Peoples Action; (2) John

Peoples' Motion to Dismiss the Complaint[1] Pursuant to Federal Rule of Civil Procedure Rule 12(b)(1); (3) John Peoples' Motion to Dismiss Any Reference to a TRO Which Was Entered Improperly After the Case Was Dismissed With Prejudice;[2] (4) a Cross Motion by Howard Langer to Strike Peoples' Proposed Findings of Fact, Conclusions of Law and the Memorandum of Law in Support of the Motion to Dismiss; and, (5) John Peoples's Motion to Compel.[3]

All of the Motions arise out of a dispute between John F. Peoples, Esquire ("Peoples"), and Howard Langer, Esquire ("Langer"), over a referral fee in the underlying *Linerboard* antitrust class action, MDL 1261.[4] After the *Linerboard* class action

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[1] There is no "complaint" currently before the Court in this matter. The action was dismissed by Order dated November 16, 2004. Peoples' motions to dismiss all pertain to Langer's Motion for Contempt.

[2] Peoples' counsel, Frank Marcone, incorrectly filed these motions in Civil Action No. 04-2785, rather than in MDL No. 1261. By Order dated June 1, 2007, the Court directed the Clerk of Court to correctly docket Peoples' filings in MDL No. 1261.

[3] On February 22, 2008 (in Civil Action No. 98-5055) and March 20, 2008 (in MDL 1261), Langer filed a second contempt motion arising out of the filing by Peoples of a lawsuit in Delaware County, in violation of the All Writs Act injunction.

Peoples also filed two recusal motions – a Motion for Recusal Under 28 U.S.C. §§ 455(a) and 455(b), and a Supplemental Motion to Recuse. Those motions were denied by Memorandum and Order dated July 14, 2008.

[4] As the Court explained in In re Linerboard Antitrust Litig., 2004 WL 1221350 (E.D. Pa.June 2, 2004), Langer

> was approached by an attorney representing a purchaser of boxes from Stone who asked if liaison counsel would research the possibility

was settled, Peoples filed an action against Langer in the Court of Common Pleas of Philadelphia County in which he sought a referral fee. That action was removed to federal court and docketed as Civil Action No. 04-2785. The *Peoples* case was settled for $2.92 million following extensive conferencing before United States Magistrate Judge Thomas J. Rueter. It was dismissed with prejudice on November 16, 2004, by agreement of the parties, pursuant to Local Civil Rule 41.1(b).

The Motion for Contempt arises out of an allegedly threatening telephone message left on the voicemail of Langer, liaison counsel for the class-action component of MDL No. 1261, on June 29, 2006. The Court concludes that, in making that telephone call, Peoples violated the broad agreed-upon injunction orders of March 22, 2005 and September 8, 2005, and the All Writs Act Injunction issued July 6, 2004. However, after considering the circumstances and consequences of Peoples's actions – specifically, the actual language in the telephone message giving rise to the contempt motion, the fact that there have been no further violations since June

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> of bringing an action on behalf of purchasers of corrugated boxes from Stone. That lawyer, John Peoples, had approached other antitrust lawyers with his client's claim but they all had declined to pursue the matter. Liaison counsel concluded that *In re Sugar Industry Antitrust Litig.*, 570 F.2d 13, 19 (3d Cir. 1978) provided a viable, if unused (in the class action context), exception to Illinois Brick under which suit could be instituted against Stone.

Id. at ¶6.

29, 2006, and Peoples' physical and mental health – the Court declines to impose sanctions on Peoples. In so ruling, the Court explains the bases of its jurisdiction over this dispute, which will end upon the termination of the class action phase of MDL No. 1261. An order and memorandum terminating the class action phase of MDL No. 1261 will issue upon receipt of a supplemental Report of the Claims Administrator.

On the present state of the record, and without addressing the merits, the Court declines to impose disciplinary sanctions upon Peoples or refer Peoples' behavior to Chief Judge Bartle for an order to show cause why he should not be suspended from practice. This drawn-out personal quarrel between Langer and Peoples must end – it warrants no further imposition upon the judicial system.

Accordingly, Howard Langer's Motion for an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring his Behavior to Chief Judge Bartle for an Order to Show Cause Why He Should Not Be Suspended From Practice and Request for Expedited Hearing ("Motion for Contempt") is denied.[5] Peoples's Motions to Dismiss, which raise jurisdictional

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[5] In view of this ruling, Howard Langer's Motion to Stay the Peoples Action and Peoples's Motion to Compel are denied as moot.

questions, are denied by reason of the Court's determination that it has jurisdiction.[6]

II. BACKGROUND

In a previous Memorandum addressing the Motion by Howard Langer for Protective Order and to Compel, the Court set forth an abbreviated procedural and factual history of this matter. To resolve the Motion for Contempt, the Court now details the full history of this dispute between Langer and Peoples.

A. The *Linerboard* Class-Action Settlement and Fee Allocation

On March 21, 2004, the Court granted final approval of the last two partial settlements of the class-action component of MDL 1261. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631 (E.D. Pa. 2003). With the Court's approval of these "settlements, all claims in the class action were resolved for a total of $202,572,489." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004).

On June 2, 2004, this Court awarded "a counsel fee of 30 percent of the total settlements of $202,572,489 ("Settlement Fund") to all counsel *with allocations to specific firms to be made by liaison counsel, Howard Langer, Esquire* . . . ." Order of June 2, 2004 (emphasis added); see also *In re*

[6] Langer's Cross-Motion to Strike Peoples's Proposed Findings of Fact, Conclusions of Law and a Memorandum of Law in Support of the Motion to Dismiss is denied as moot.

Linerboard Antitrust Litig., 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004) (concluding "that consideration of the seven Gunter factors counsels in favor of awarding petitioners their requested fee"). Langer allocated two million dollars to Peoples for his contribution to the case. (May 3, 2007 Hr'g Tr. 27.) According to Peoples, he "made it very clear [to Langer] that I [Peoples] was going to get very angry if he didn't come up with more money." (May 3, 2007 Hr'g Tr. 27.)

By Order dated June 4, 2004, the Court amended the Order of June 2, 2004 to include, *inter alia*, the following language: "the Court RETAINS jurisdiction over this case including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action." *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, *1 (E.D. Pa. June 4, 2004). The Court has on several other occasions explicitly retained jurisdiction over matters related to the distribution of the Settlement Fund. See, e.g., *In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 344 (E.D. Pa. 2004) ("The Court retains continuing jurisdiction over this matter including jurisdiction over the Settlement Fund and its distribution, the Funds to be distributed pursuant to this Order, as well as all issues relating to the fees and costs of counsel in this action.").

B. Peoples' Lawsuit

On June 23, 2004, Peoples filed a complaint in the Court of Common Pleas of Philadelphia County.

In his Complaint, Peoples alleged that he was entitled to four million dollars in attorney's fees from the settlement of the box class-action component of MDL 1261, as well as punitive damages and attorney's fees. (Peoples' Compl. ¶ 49.) He also asked the court to order Langer "to, first, escrow $6 million pending the final outcome of the litigation and . . . upon such final outcome of the litigation, to pay over to Plaintiff said $6 million . . . ." (Peoples' Compl. ¶ 67.)

On June 24, 2004, Langer removed the Peoples case to the United States District Court for the Eastern District of Pennsylvania. The Notice of Removal stated that

> Plaintiff's Complaint seeks a constructive trust on attorneys' fees awarded in a class action entitled In re Linerboard Antitrust Litigation, MDL No. 1261. Plaintiff has also sought a preliminary and permanent injunction with respect to such fees. The allocation of those attorneys' fees is currently pending in this Court before the Honorable Jan E. DuBois. This Court has and is currently exercising jurisdiction over the res that is the subject matter of the constructive trust and injunction sought by plaintiff, namely, the common fund generated by the Linerboard settlements.

Notice of Removal ¶2. This case was captioned *John F. Peoples v. Howard Langer, Esq. And Langer & Grogran, P.C.*, Civil Action No. 04-2785.

By Order dated July 6, 2004, issued pursuant to the All Writs Act ("All Writs Act Injunction"), the Court enjoined "all attorneys who participated in any way in MDL 1261 including, but not limited to, John F. Peoples, Esquire, and all persons acting in their behalf . . from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania."[7] The Court stated that the injunction was "necessary to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261." Order of July 6, 2004 (citing *In re Synthroid Mktg. Litig.*, Civil Action No. 97-6017 (N.D. Ill. Aug. 22, 2003)).

On July 9, 2004, Peoples filed a motion to remand his suit for counsel fee. On that same date, Langer filed a Motion to Stay the Peoples Action, to Consider the Status of the 7/6/04 All Writs Act Injunction in the Event of a Remand of the Peoples Action, and to Schedule a Hearing on Liaison Counsel's First Request for Determination of Allocation in MDL 1261. Three days later, on July

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[7] The order was without prejudice "to the right of John F. Peoples, Esquire, or any other party to seek a remand of any case pending in this District which concerns the allocation of counsel fees in MDL 1261, or the actions of liaison counsel in connection therewith." Order of July 6, 2004.

12, 2007, Peoples filed a Motion to Dissolve the All Writs Act Injunction.

By Order dated September 27, 2004, upon the joint request of the parties for mediation, the Court referred *Peoples v. Langer*, Civil Action No. 04-2785, to United States Magistrate Judge Thomas J. Rueter for settlement conferences. After several conferences before Judge Rueter, Peoples and Langer reached a settlement agreement on December 22, 2004. ("Settlement Agreement"). The Settlement Agreement provided that, "[i]n the full and final settlement of Mr. Peoples' claims set forth in the Action against Mr. Langer . . . , Mr. Langer shall cause to be paid to Mr. Peoples from the amount awarded as counsel fees in MDL 1261 . . . the sum of $2,940,000." (Settlement Agreement ¶ 2.) The Settlement Agreement also provided as follows: "Mr. Peoples specifically states that, notwithstanding a statement he made concerning a possible disciplinary complaint against Mr. Langer, he neither has nor knows of any ground for such a complaint." (Settlement Agreement ¶ 6.) By Order dated November 16, 2004, "it having been reported that the issues between the parties in the above action have been settled," the Court dismissed *Peoples v. Langer*, No. 04-2785 with prejudice pursuant to Rule 41.1(b) of the Local Rules of Civil Procedure of this Court.

As a result of the settlement and the dismissal order, by Order dated November 17, 2004, all of the motions in the Peoples action including, but not limited to, Peoples's Motion for Remand and

Langer's Motion for a Stay, and Peoples's Motion to Dissolve the All Writs Act Injunction, were denied as moot.

C. Peoples' Initial Telephone Messages

From July 17, 2004 through March 17, 2005, while *Peoples v. Langer,* No. 04-2785 was pending and after it was dismissed, Peoples left a series of ten telephone messages on Langer's voicemail.

1. On July 17, 2004, Peoples stated "This is just Judge Jacob Dubinsky calling."

2. On August 19, 2004, Peoples stated "Howie, I'm going to make you famous. You're going to be in the newspaper."

3. In an undated message, Peoples stated "Yeah, Howard. I hope you enjoy the newspaper coverage that's – that's uhh, coming up right after we settle. Bye-bye."

4. In an undated message, Peoples stated "Hey, Howie - I hope you like the letter that we write to the Disciplinary Board."

5. In an undated message, Peoples stated "Yeah, Howie – I wonder if Sandals Knows you made $30 million. He's gonna find out."

6. On January 7, 2005, Peoples stated "Howie, it's Johnny. I haven't forgotten about, Howie. Bye-bye."

7. On January 8, 2005, Peoples stated Howie, it's Johnny again. I wanted to let you know last night I had a nice conversation with one of the defense bar who is very friendly with some rightwing people and

people on the Senate Judiciary Committee and, um, he thinks it's a lost a certainty that they are going to have hearing on, ahh, Linerboard, Howard, and you can get called as a witness. Better bone up on your Fifth Amendment law, Howie. Bye.

8. On March 14, 2005, at 3:09 am, Peoples stated "I haven't forgotten you, Howard."

9. On March 14, 2005 at 1:43 pm, Peoples left another message, which was unintelligible.

10. On March 17, 2005, Peoples stated "I haven't forgotten, Howard."

(Langer's Emergency Mot. for TRO, Document No. 631, Ex. A)

Peoples admitted several times during the Contempt Hearing that he left each of these telephone messages, but denied that they were threatening. (May 3, 2007 Hr'g Tr. 43-44, 52, 88-103.) Peoples testified that he left those messages "[t]o just express my anger and also to let [Langer] know that [he] better never ask me for another case." (May 3, 2007 Hr'g Tr. 44.)
According to Peoples

> I was not happy about the settlement [in *Peoples v. Langer*, No. 04-2785], I didn't want to settle and I was despondent about it for months and years . . . Like I said, that . . . was the proudest day of my life when [the box class-action component of MDL 1261] got settled and Howard [Langer] ruined it.

May 3, 2007 Tr. at 94.

D. The Emergency Temporary Restraining Order and Consent Stipulation Order

In order to stop the harassing telephone messages, on March 21, 2005, Langer filed an Emergency Motion for a Temporary Restraining Order in MDL No. 1261. By Order dated March 22, 2005 ("Emergency TRO"), agreed to by the parties, the Court granted that motion. The Emergency TRO provided as follows:

> 1. John F. Peoples is HEREBY ENJOINED from having any contact or other communication, or leaving any messages for Liaison counsel, Howard Langer, and,
>
> 2. John F. Peoples is HEREBY ENJOINED from making any defamatory statements regarding Howard Langer, and from undertaking any other action of any kind, directly or indirectly, having the intended or the necessary effect of harming Howard Langer or his family in any fashion.
>
> IT IS FURTHER ORDERED that this Temporary Restraining Order . . . shall, by agreement of the parties, remain in effect until further order of the Court but shall not be filed of record unless there is a reported

violation of the Temporary Restraining Order.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall be held in STRICT CONFIDENCE by the parties to this proceeding and their attorneys, and shall NOT BE DISCLOSED to any other party without prior Court approval.

On September 8, 2005, the Court issued a Consent Stipulation Order, agreed upon in form by the parties. That order provides as follows:

[W]ithout any admissions by either party and purely to avoid the expense of litigation, the parties having reached agreement to the terms reflected in this Court's Temporary Restraining Order issued on March 22, 2005, IT IS ORDERED as follows:

The Order dated March 22, 2005 shall by agreement of the parties remain in effect on the following conditions:

IT IS ORDERED that said Order shall remain in effect until such time as the Court is satisfied that there is no longer a need for it, but shall not be filed of record unless there is a reported violation of that Order.

IT IS FURTHER ORDERED that this Court retains jurisdiction to enforce

> the terms of this Consent Stipulation Order and the Temporary Restraining Order;
>
> IT IS FURTHER ORDERED that this Consent Order shall be held in STRICT
> CONFIDENCE by the parties to this proceeding and their attorneys, and SHALL NOT BE DISCLOSED to any other person without prior Court approval.
>
> It having been represented to the Court by John F. Peoples' counsel that John F. Peoples has discussed this form of Order with him and that John F. Peoples consents to the issuance of this Order to the parties and that the Order shall be issued but not entered, IT IS FURTHER ORDERED that John F. Peoples waives any right to contest the issuance of this Order and the right to contest its effect because it has been issued but not entered.

As Peoples conceded during the Contempt Hearing, the purpose of issuing but not filing the Emergency TRO and the Consent Stipulation Order was to protect Peoples. ((May 3, 2007 Hr'g Tr. 55.) On that issue, Peoples' attorney was concerned that, if recorded, the Emergency TRO and the Consent Stipulation Order could have been used in disciplinary proceedings and could harm Peoples' legal practice.

E. Peoples' Letter to the Disciplinary Board

In a letter to the Disciplinary Board dated October 19, 2005, Peoples "lodge[d] a formal complaint against Howard Langer, Esquire . . . in connection with his refusal to honor his contractual responsibility to pay [him] a co-counsel fee of approximately 4.7 million dollars . . . ." (Lead Counsel's Mem. on Potential Disciplinary Violations, Ex. B at 1.)

F. Peoples' Telephone Message of June 29, 2006

On June 29, 2006, Peoples left another telephone message on Langer's voicemail, which stated "I didn't forget you." (Langer's Mot. for Contempt, Ex. A.) Peoples admitted during the Contempt Hearing that he left this telephone message, but denied that it was threatening. (May 3, 2007 Hr'g Tr. 46.) When questioned why he left the message, Peoples responded "it's just almost every night I think about this case[8] and I just bubble over with anger and it's – you can't make it go away." (May 3, 2007 Hr'g Tr. 47.)

Langer immediately informed the Court of the incident by letter dated June 29, 2006. On July 5, 2006, Langer filed his Motion for Contempt. In

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[8] Peoples was referring to the settlement of the class-action component of MDL 1261 and to the settlement of *Peoples v. Langer*, Civil Action No. 04-2785. See id.

Langer's Proposed Findings of Fact and Conclusions of Law, Langer asked the Court for the following relief:

> (A) An Order holding Mr. Peoples in Contempt;
>
> (B) A prospective coercive civil contempt remedy, of a prospective amount to be paid into Court should Mr. Peoples again violate the current Orders, in an amount set by the court as reasonable under the circumstances to ensure compliance with the existing Orders; and
>
> (C) Permanent injunctive relief both under the settlement agreement and court orders.

(Langer's Proposed Findings of Fact and Conclusions of Law ¶ 12.)

On October 22, 2006, Peoples filed a Motion to Dismiss Any Reference To a TRO Which Was Entered Improperly After the Case was Dismissed With Prejudice ("First Motion to Dismiss"). The motion was improperly filed in *Peoples v. Langer*, Civil Action No. 04-2785, which had been dismissed with prejudice on November 16, 2004 after Peoples and Langer settled their fee dispute. In contrast, Langer's Motion for Contempt was correctly filed in *In re Linerboard Antitrust Litig.*, MDL No. 1261, as both the Emergency TRO and Consent Stipulation Order pertained to the class action component of

MDL No. 1261 (and were correctly captioned "MDL No. 1261").

On February 13, 2007, Peoples filed a Motion to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure Rule [*sic*] 12(b)(1) ("Second Motion to Dismiss"). Despite the Court having informed Peoples' attorney on numerous occasions that the contempt matter pertained to *In re Linerboard Antitrust Litig.*, MDL No. 1261, rather than *Peoples v. Langer,* Civil Action No. 04-2785, Peoples' attorney again filed the motion in *Peoples v. Langer*, Civil Action No. 04-2785.

G. The Contempt Hearing

After several unsuccessful attempts by the parties to resolve the issues presented by the Motion for Contempt,[9] the Court conducted contempt hearings on March 16, 2007, May 3, 2007, and May 4, 2007.

Peoples and his attorney, Frank Marcone ("Marcone"), frequently attempted to inject into the contempt hearing the issue of Peoples' contribution to the class action component of MDL No. 1261. (See, e.g., May 3, 2007 Hr'g Tr. 16-20.) The Court

[9] Langer's attorney repeatedly conveyed to the Court and to Marcone that "this case could be resolved by a consent order which simply provided that there would be no more violations of the injunctions, no more telephone calls, no more contact in keeping with the injunctions and it also provided for a coercive penalty in the even of a future violation." May 4, 2007 Tr. at 109.

permitted limited testimony on this issue because, according to Marcone, Peoples' testimony on this topic was relevant to "mitigation." In actuality, it was an improper and ill-conceived attempt to raise long-resolved issues regarding a proper fee allocation to Peoples for his contribution to the case. That is, Peoples and Marcone attempted to use the Contempt Hearing as a vehicle to reopen *Peoples v. Langer,* Civil Action No. 04-2785.10[10] (See. e.g., May 3, 2007 Hr'g Tr. 44, 48, stating "I want to open the other" case).

During the contempt hearing, Peoples also testified about an improper relationship between Langer and the Court. He explained that Langer and other individuals led him to believe that Langer had an improper relationship with the Court in order to persuade him to settle his fee dispute. The other individuals to whom Peoples referred during his testimony, Eugene Spector, Esquire, and Howard Sedran, Esquire, testified that they made no representation to Peoples that Langer had an improper relationship with the Court. (May 4, 2007 Hr'g Tr. 13-57.) Langer also testified to this effect. (May 4, 2007 Hr'g Tr. 59-129.)

H. Peoples' Actions Towards Langer After June 29, 2006

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[10] Marcone also improperly attempted to reopen *Peoples v. Langer,* Civil Action No. 04-2785, in his submissions to the Court. See, e.g., Peoples' Proposed Findings of Fact and Conclusions of Law.

Peoples has not left another telephone message on Langer's voicemail since June 29, 2006. Initially, Peoples stated that, he was "going to try" not to violate the Stipulated Order, but "it's still very difficult because of the hatred that I have for [Langer], it's very difficult." May 3, 2007 Tr. at 50. Later, Peoples stated more definitively that he would not violate the Stipulated Order in the future. *Id.* at 51.

III. JURISDICTION

In both of Peoples' motions to dismiss, Peoples argues that he cannot be held in contempt because this Court lacks jurisdiction. Peoples' First Motion to Dismiss argues that the Court lacks jurisdiction because the Court dismissed Peoples v. Langer, Civil Action No. 04-2785, with prejudice. Peoples' Second Motion to Dismiss primarily argues that the contempt issues currently before the Court bear no relationship to *In re Linerboard Antitrust Litig.*, MDL No. 1261. The Court rejects these arguments.

In sum, the fact that the Court dismissed *Peoples v. Langer*, Civil Action No. 04-2785, with prejudice has no bearing on whether the Court has jurisdiction over this dispute, which pertains only *to In re Linerboard Antitrust Litig.*, MDL No. 1261. The Court has jurisdiction over this dispute pursuant to its jurisdiction over matters relating to the award and allocation of counsel fees in the class

action component of MDL No. 1261.[11] However, this jurisdiction will end upon the termination of the class action phase of MDL No. 1261, as a result of which judicial intervention will no longer be necessary to effectuate and prevent the frustration of its orders in the case. The class action component of MDL No. 1261 will be terminated upon receipt of a supplement to the Final Report of the Claims Administrator.

The Court first addresses its jurisdiction to enjoin actions in other forums pertaining to the fee allocation in MDL No. 1261, and then addresses its jurisdiction to issue the Emergency TRO, the Consent Stipulation Order, and the All Writs Act Injunction.

A. Jurisdiction to Enjoin Actions in Other Forums

1. Overview

On July 6, 2004, this Court entered the All Writs Act Injunction, enjoining Peoples from "taking any further action relating to the allocation of fees in MDL 1261 or the action of liaison counsel in connection therewith in any court or forum other

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[11] For that reason, the Court issued the Emergency TRO and Consent Stipulation Order in *In re Linerboard Antitrust Litig.*, MDL No. 1261, not in *Peoples v. Langer*, No. 04-2785. The Emergency TRO and Consent Stipulation Order were both correctly captioned "MDL No. 1261." Langer correctly filed the Motion for Contempt in *In re Linerboard Antitrust Litig.*, MDL No. 1261, not under Peoples v. Langer, No. 04-2785.

than the United States District Court . . . ." Order of July 6, 2004 (emphasis added). The All Writs Injunction stated that the injunction was "necessary to preserve the Court's jurisdiction over all matters relating to the award and allocation of counsel fees in MDL 1261." Order of July 6, 2004. In contrast, the Court *did not* enjoin *Peoples v. Langer,* Civil Action No. 04-2785, which was properly removed to this Court on June 24, 2004, prior to the issuance of the All Writs Injunction. Moreover, the propriety of the removal of *Peoples v. Langer,* No. 04-2785, is irrelevant to the instant contempt matter, which pertains only to MDL No. 1261.[12] The Court concludes that it had jurisdiction to issue the All Writs Act Injunction to protect and effectuate its

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[12]In a letter to the Court dated May 18, 2007, Peoples argues that, under *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002), this Court lacked jurisdiction to enter the All Writs Act. In *Sygenta*, the Supreme Court held that the All Writs Act does not give federal courts the authority to remove a state-court case to prevent frustration of orders that the Court had previously issued; removal is proper only if federal court independently would have had original subject matter jurisdiction. Id. at 31-32. The Court's rational for this conclusion was that the general removal statute, 28 U.S.C. § 1441, "requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court." Id. at 34.

The *Syngenta* case is inapposite to this case. First, *Peoples v. Langer*, No. 04-2785, which Peoples argues was improperly removed under the All Writs Act, was *not removed* pursuant to the Court's All Writs Act Injunction. Indeed, the Court issued the All Writs Injunction *after* the case had been removed. Second, the instant contempt issues pertain only to MDL No. 1261, and not to *Peoples v. Langer*, Civil Action No. 04-2785. Thus, it is irrelevant whether the Peoples case was improperly removed.

Order of June 2, 2004 addressing allocation of attorney's fees.

2. Legal Standard

The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. "The authority the All Writs Act imparts to district courts is limited, however, by the Anti-Injunction Act, which prohibits injunctions 'to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.'" *In re Diet Drugs (Phentermine/ Fenfluramine/Dexfenfluramine) Products Liability Litig.*, 369 F. 3d 293, 305 (3d Cir. 2004) (citing 28 U.S.C. § 2283).

"The settled law . . . establishes that the 'aid of jurisdiction' exception . . . includes consolidated multidistrict litigation, where a parallel state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation." *In re Prudential Ins. Co. of America Sales Practices Litig.*, 2007 WL 1258618, *4 (3d Cir. May 1, 2007) (citations omitted). The All Writs Act "is generally used to prohibit activities in another court that threaten to undermine a pending settlement in the enjoining court." *Grider v. Keystone Health Plan Cent., Inc.* 500 F.3d 322, 330 (3d Cir. 2007). As the Third

Circuit explained in *In re Diet Drugs*, 282 F.3d 220, 236 (3d Cir. 2002),

> Complex cases in the later stages--where, for instance, settlement negotiations are underway--embody an enormous amount of time and expenditure of resources. It is in the nature of complex litigation that the parties often seek complicated, comprehensive settlements to resolve as many claims as possible in one proceeding. These cases are especially vulnerable to parallel state actions that may frustrate the district court's efforts to craft a settlement in the multi-district litigation before it, thereby destroying the ability to achieve the benefits of consolidation. *In complex cases where certification or settlement has received conditional approval, or perhaps even where settlement is pending, the challenges facing the overseeing court are such that it is likely that almost any parallel litigation in other fora presents a genuine threat to the jurisdiction of the federal court.*[13]

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[13] In contrast, in *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 134 F.3d 133, 144 -145 (3d Cir. 1998), the Third Circuit ruled that the District Court did not have jurisdiction to enjoin a parallel state court action. The Third Circuit emphasized that the District Court in *In re*

Id. (quotation and citation omitted, emphasis added); see also *In re Am. Honda Motor Co., Inc., Dealerships Relations Litig.*, 315 F.3d 417, 438 (4th Cir. 2003). Recently, the Third Circuit reemphasized that, "it may not be sufficient that state actions risk some measure of inconvenience or duplicative litigation" and that "an injunction under the All Writs Act is appropriate only when "the state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation." *Grider*, 2007 WL 2416772, at *7 (quotations omitted).

3. Analysis

General Motors had not yet approved or conditionally approved a settlement.

First, we note that the "necessary in aid of its jurisdiction" exception applies only to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case. No such interference or impairment appears in this record. *Indeed, in those cases cited by appellants where a state action has been enjoined, the federal court had already approved or conditionally approved its own settlement or the approval was imminent. That is not the case here.* The MDL court is not considering a nationwide settlement pursuant to our remand in *GM I*. Moreover, the Louisiana settlement contained opt out provisions, thereby protecting the rights of the 277 remaining MDL plaintiffs. Id. (citations and quotations omitted, emphasis added). In this case, unlike in In re General Motors, the Court had already approved settlement of the class-action component of MDL No. 1261 when it issue the All Writs Act Injunction. Moreover, the All Writs Act Injunction was limited to litigation "relating to the allocation of fees in MDL 1261."

Under *In re Diet Drugs*, this Court had jurisdiction to enter the July 6, 2004 All Writs Injunction. When Peoples filed his lawsuit, the Court had already approved the settlement and awarded "a counsel fee of 30 percent of the total settlements of $202,572,489 ("Settlement Fund") [in the class action component of MDL No. 1261] to all counsel *with allocations to specific firms to be made by liaison counsel, Howard Langer, Esquire* . . . ." Order of June 2, 2004 (emphasis added); see also *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004).

By Order dated June 4, 2004, the Court amended the Order of June 2, 2004 to include, *inter alia*, the following language: "the Court RETAINS jurisdiction over this case including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action." *In re Linerboard Antitrust Litig.*, 2004 WL 1240775, *1 (E.D. Pa. June 4, 2004). The Court has on several other occasions explicitly retained jurisdiction over matters related to the distribution of the Settlement Fund. See, e.g., *In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 344 (E.D. Pa. 2004) ("The Court retains continuing jurisdiction over this matter including jurisdiction over the Settlement Fund and its distribution, the Funds to be distributed pursuant to this Order, as well as all issues relating to the fees and costs of counsel in this action.").

In implementing this Court's Orders of June 2 and 4, 2004, Langer allocated two million dollars to John F. Peoples, Esq. for his contribution to the case. Peoples was dissatisfied with that amount. As Peoples explained during the Contempt Hearing, "I . . . wanted ten percent of the box committee's fee . . . I should have gotten $4.7 million." (May 3, 2007 Hr'g Tr. 61.)

On June 23, 2004, Peoples filed a complaint in the Court of Common Pleas of Philadelphia County seeking four million dollars in attorney's fees from the settlement of the box class action component of MDL 1261, as well as punitive damages and attorney's fees. Peoples's Compl. ¶ 49. He also asked the state court to order Langer "to, first, escrow $6 million [approximately ten (10) percent of the total fee award] pending the final outcome of the litigation and . . . upon such final outcome of the litigation, to pay over to Plaintiff said $6 million . . . ." Peoples' Compl. ¶ 67. At the very time Langer was implementing the Court's order of June 2, 2004, and allocating the court-awarded counsel fee among the more than 200 lawyers who participated in the MDL, Peoples asked the state court to escrow $6 million (approximately ten percent) of that fund.

A reading of Peoples's filings in this case would leave one with the impression that his fee dispute with Langer affected only Langer, and had nothing to do with the fee awarded by the Court in the Linerboard Antitrust Litigation, MDL 1261, and the attorneys to whom Langer allocated portions of the fee. This is incorrect. Peoples' suit against

Langer directly implicated the res in the MDL – the attorneys fee awarded by the Court.

Accordingly, the Court enjoined Peoples from "taking any further action relating to the allocation of fees in MDL 1261 or the action of liaison counsel in connection therewith in any court or forum other than the United States District Court . . . ." Order of July 6, 2004 (emphasis added). The All Writs Act Injunction was necessary to effectuate its Order of June 2, 2004 addressing allocation of attorney's fees and to prevent disruption of "the orderly resolution of the federal litigation." *Grider*, 2007 WL 2416772, at *7.

The Court notes that in *In re Synthroid Mktg. Litig.*, No. 97-6017 (N.D. Ill. Aug. 22, 2003), the United States District Court for the Northern District of Illinois issued a substantively identical All Writs Act Injunction, granting "counsels' motions to enjoin litigation filed in violation of this court's final order and judgment . . . ." That court stated as follows

> Any issue *with respect to the division of fees* is necessarily within the jurisdiction of this court and must be resolved in this forum. Chander Loupe, Greg Murphy and Charles Graddick are therefore *enjoined from further pursuing ligation with respect to fees awarded in this case* in Alabama state court or any other court other than this court. This injunction is necessary to preserve the exclusive jurisdiction of this court to resolve fee

> issues involving this litigation and is granted under authority of the All Writs Act . . . .

Id. (emphasis added).

To the extent that Peoples argues that the Court did not have jurisdiction to issue the All Writs Injunction because Peoples was not a litigant or counsel in MDL No. 1261, the argument is rejected. As the Third Circuit explained in *Commonwealth of Pennsylvania v. Porter,* 659 F.2d 06 (3d Cir. 1981),

> The power conferred by the [All Writs] Act extends, under appropriate circumstances, to persons who, though not parties to the original action . . . , are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice. This Circuit recently stated that 'the basis of injunctive relief under the All Writs Act against a third party is not culpability, but practical necessity.'

Id. at 325 (quoting *Pittsburgh-Des Moines Steel Co. v. United Steelworkers,* 633 F.2d 302, 307 (1980) (brackets omitted)).

As the Second Circuit more recently explained, the All Writs "Act's grant of authority is plainly broad and, on its face, makes no distinction

between parties and nonparties." *United States v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO*, 266 F.3d 45, 50 (2d Cir. 2001). "A district court may issue such a writ against any person with the 'minimum contacts' with the forum necessary to the court's exercise of personal jurisdiction." *Id.* Additionally, in the context of an MDL litigation, the majority in *In re American Honda Motor* was not swayed by the fact that the enjoined individual "did not participate in the MDL proceedings as either a litigant or as counsel . . . ." 315 F.3d at 443.

For all of the foregoing reasons, the Court concludes that it had jurisdiction to issue the July 6, 2004 All Writs Act Injunction.

B. Jurisdiction to Enter the Emergency TRO and the Consent Stipulation Order

Under the All Writs Act, the Court also had jurisdiction to enter the Emergency TRO and the Consent Stipulation Order.

1. Legal Standard

The All Writs Act authorizes "a federal court 'to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.'" *Pennsylvania Bureau of Correction v. United States Marshals Serv.*, 474 U.S. 34, 40 (1985), aff'g *Garland v. Sullivan*, 737 F.2d 1283, 1286 (3d Cir. 1984). "[T]he

Anti-Injunction Act does not bar courts with jurisdiction over complex multidistrict litigation from issuing injunctions to protect the integrity of their rulings." *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002) (parenthetically quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998)).

"It is well recognized that federal courts have the power under the All Writs Act . . . to enjoin litigants who are abusing the court system and harassing their opponents." *Simcox v. McDermott Int'l, Inc.*, 152 F.R.D. 689, 700 (S.D. Tex.1994); see also *In re Stabile*, 436 F. Supp. 2d 406, 413 (E.D.N.Y. 2006) (noting the "All Writs Act is the proper basis and appropriate remedy to address complaints of harassment").

2. Analysis

After the settlement of the class-action component of MDL No. 1261, the Court expressly "retained jurisdiction over this case including jurisdiction over the Settlement Fund and its distribution, as well as all issues relating to the fees and costs of counsel in this action." Order dated June 4, 2004. This followed the Court's order of June 2, 2004, in which the Court awarded "a counsel fee of 30 percent of the total settlements of $202,572,489 ("Settlement Fund") to all counsel with allocations to specific firms to be made by liaison counsel, Howard Langer, Esquire . . . ." Order of June 2, 2004; see also *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *2 (E.D. Pa. June 2, 2004).

From July 17, 2004 through March 17, 2005, Peoples left a series of ten threatening telephone messages on Langer's voicemail. As Peoples admits, he made the calls to Langer because he was angry about the share of the attorney's fees that Langer allocated to him. See *Peoples*, May 3, 2007 Tr. at 43-44.

To effectuate and prevent the frustration of its June 2, 2004 Order awarding counsel fees in the class action component of MDL No. 1261, the Court issued two agreed-upon Orders – the Emergency TRO and the Consent Stipulation Order - both of which enjoined Peoples from, *inter alia*, making threatening phone calls to Langer. (See Section II.D of this Memorandum.) The purpose of the orders was to prevent Peoples from interfering with Langer's fee allocations in MDL No. 1261 in any way.

Accordingly, the Court concludes that, under the All Writs Act, it had jurisdiction to enter the Emergency TRO and the Consent Stipulation Order.

C. Jurisdiction Over Peoples v. Langer, Civil Action No. 04-2785

Although not directly involved in the motions presently pending, Peoples has, in the past challenged the Court's jurisdiction over his underlying lawsuit in state court, removed to federal court and docketed as Civil Action No. 04-2785. That issue was squarely presented to the Court of Appeals in Peoples's Petition for Writ of Mandamus filed August 30, 2007. In that Petition, Peoples sought an

order declaring that this Court had no jurisdiction over the underlying fee dispute between Peoples and Langer, and vacating all prior orders issued in that case.

In its Answer to that Petition, this Court detailed the law applicable to jurisdiction over the case. In sum, this Court concluded that it had supplemental or ancillary jurisdiction over the Peoples fee dispute based on the well established principle that federal courts may assert "ancillary" or "supplemental" jurisdiction for "two separate, though sometimes related purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 380 (1994).

The Petition for Writ of Mandamus was denied by Order of the Court of Appeals dated October 16, 2007. A Petition for Rehearing Before the Court En Banc was thereafter denied by Order dated February 12, 2008. Although no opinions were written by the Court of Appeals, those rulings, in essence, affirmed this Court's determination that it had jurisdiction over the Peoples fee dispute, Civil Action No. 04-2785.

IV. STANDARD OF REVIEW - CONTEMPT MOTION

"To prove civil contempt the court must find that (1) a valid court order existed, (2) the defendant had knowledge of the order, and (3) the defendant disobeyed the order." *United States For Use and Benefit of Salvino Steel & Iron Works, Inc. v. Safeco Ins. Co. of Am.*, 181 Fed. App'x 247, 250-251 (3d Cir. 2006) (citing *John T. ex rel. Paul T. v. Delaware County Intermediate Unit*, 318 F.3d 545, 552 (3d Cir. 2003)).

"The plaintiff has a heavy burden to show a defendant guilty of civil contempt. It must be done by 'clear and convincing evidence,' and where there is ground to doubt the wrongfulness of the conduct, he should not be adjudged in contempt." *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994) (citing *Quinter v. Volkswagen of America*, 676 F.2d 969, 974 (3d Cir. 1982)).

The Third Circuit has enunciated that "willfulness is not a necessary element of civil contempt and, accordingly, that evidence regarding good faith does not bar the conclusion that the defendant acted in contempt." *Int'l Mktg., Inc. v. Counteract Balancing Beads, Inc.*, 48 Fed. App'x 372, 375 (3d. Cir. 2002). On the other hand, willfulness is "relevant to the contempt proceeding . . . insofar as it pertain[s] to the extent of the sanction to be imposed." *Harley-Davidson, Inc. v. Morris*, 19 F.3d 142, 148-149 (3d Cir. 1994) (citing *TWM Mfg. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983)).

"[T]he touchstone of civil contempt is that it be coercive or compensatory." *Inst. For Motivational*

Living, Inc. v. Doulos Inst. for Strategic Consulting, Inc., 110 Fed. App'x 283, 289 (3d Cir. Oct. 5, 2004). "A district court has 'wide discretion in fashioning a remedy' for civil contempt." *Int'l Mktg.*, 48 Fed. App'x at 374 (3d Cir. 2002) (citing *Council for Clean Air v. Pennsylvania*, 678 F.2d 470, 478 (3d Cir. 1982)). "[P]enalties for civil contempt are limited to measures that may be appropriate to compel compliance with the underlying order and to compensate the opposing party for losses sustained as a result of the noncompliance." *Wedgewood Village Pharmacy, Inc. v. United States*, 421 F.3d 263, 268 (3d Cir. 2005) (citing *United States v. United Mine Workers*, 330 U.S. 258, 303-04 (1947)).

V. DISCUSSION - CONTEMPT MOTION

A. Contempt

Langer alleges that Peoples is in contempt of: (1) the Emergency TRO dated March 22, 2005 and the Consent Stipulation Order dated September 8, 2005; and (2) the All Writs Act Injunction. The Court addresses each contempt claim in turn.

1. The Emergency TRO and Consent Stipulation Order

Langer argues that Peoples violated this Courts' March 22, 2005 Emergency TRO and September 8, 2005 Consent Stipulation Order by leaving a telephone message on Langer's voicemail on June 29, 2006. The Court: (1) concludes that the Emergency TRO and the Consent Stipulation Order are valid orders; (2) finds that Peoples had

knowledge of the Emergency TRO and the Consent Stipulation Order; and (3) finds that Peoples disobeyed the Emergency TRO and the Consent Stipulation Order.

a. Validity of Emergency TRO and the Consent Stipulation Order

Peoples argues that the March 22, 2005 Emergency TRO and the September 8, 2005 Consent Stipulation Order are invalid because: (1) the Court lacked jurisdiction to issue the orders; and (2) the orders violate his rights under the First Amendment of the United States Constitution. The Court rejects these arguments and concludes that the Emergency TRO and Consent Stipulation Order are valid.

First, the Court has already discussed at length the basis for its jurisdiction to issue the Emergency TRO and the Consent Stipulation Order. Accordingly, the Court rejects Peoples' argument that the Emergency TRO and Consent Stipulation Order are invalid because the Court lacked jurisdiction.

Second, neither the Emergency TRO nor the Consent Stipulation Order violate Peoples' rights under the First Amendment. The Consent Stipulation Order incorporated the terms of the Emergency TRO, which enjoined Peoples "from making any defamatory statements regarding Howard Langer, and from under taking any other action of any kind, directly or indirectly, having the intended or the necessary effect of harming Howard

Langer or his family in any fashion." (Mar. 22, 2005 TRO at 1.) Peoples *agreed* not to make defamatory statements as part of the Consent Stipulation Order in order to resolve the issues (Peoples' phone threats) underlying the Court's Emergency TRO. Additionally, Langer's Motion for Contempt does not assert that Peoples violated the provisions of the Emergency TRO and Consent Stipulation Order pertaining to defamation, but rather that Peoples left a threatening message on his voicemail that continued a pattern of harassment by Peoples.

Moreover, "[a] person who makes a private determination that an order is incorrect, or even unconstitutional, may [be found in] contempt for violation of the order even if his or her private determination is later proven correct in the courts." *Loftus v. Southeastern Pennsylvania Transp. Authority*, 8 F. Supp. 2d 464, 467 n.4 (E.D. Pa. 1998) (citing *United States v. Stine*, 646 F.2d 839, 845 (3d Cir. 1980); *Walker v. City of Birmingham*, 388 U.S. 307, 317-18 (1967)). "A party seeking to challenge the validity of an injunction must seek judicial review, rather than simply disobeying it." *Georgine v. Amchem Products, Inc.*, 1995 WL 422792, *12 (E.D. Pa. July 12, 1995) (citing Walker, 388 U.S. at 317-18).[14]

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[14] In *Roe v. Operation Rescue*, 14 919 F.2d 857, 871 (3d Cir. 1990), the Third Circuit addressed this issue in the context of an injunction that implicated the First Amendment:

> To begin with, McMonagle's right to free speech does not immunize him from liability for engaging in proscribed conduct. Insofar as McMonagle asserts that the TRO was an

Accordingly, the Court concludes that the March 22, 2005 Emergency TRO and the September 8, 2005 Consent Stipulation Order are valid orders.

d. Knowledge of the Emergency TRO and the Consent Stipulation Order

Peoples' former counsel, George Bochetto, signed the September 8, 2005 Consent Stipulation Order. The Consent Stipulation Order states that Bochetto represented to the Court that Peoples had "discussed this form of Order with him and that John F. Peoples consents to the issuance of this Order . . . ." Additionally, Peoples testified at the Contempt Hearing that he was aware of the Consent Stipulation Order and that the injunction incorporated the terms of the March 22, 2005 Emergency TRO. (May 3, 2007 Hr'g Tr. 54.) Specifically, he was aware that the Emergency TRO and the Consent Stipulation Order prohibited him from having any contact with Langer. *Id.*

Accordingly, the Court concludes that Peoples had knowledge of the March 22, 2005 Emergency TRO and the September 8, 2005 Consent Stipulation Order.

> unreasonable time, place and manner restriction on his speech, the validity of the order may not be collaterally challenged in a contempt proceeding for violating the order.

Id. (citing *Stine*, 646 F.2d at 845); see also *Northeast Women's Center, Inc. v. McMonagle*, 939 F.2d 57, 68 (3d Cir. 1991).

c. Violation of the Emergency TRO and the Consent Stipulation Order

The September 8, 2005 Consent Stipulation Order incorporated the following language of the March 22, 2005 Emergency TRO: "John F. Peoples is HEREBY ENJOINED from having any contact or other communication, or leaving any messages for Liaison counsel, Howard Langer."

On June 29, 2006, Peoples left another telephone message on Langer's voicemail, which stated "I didn't forget you." (Langer's Mot. for Contempt, Ex. A.) Peoples admitted during the Contempt Hearing that he left this telephone message. (May 3, 2007 Hr'g Tr. 46.) When questioned why he left the message, Peoples responded "it's just almost every night I think about this case and I just bubble over with anger and it's – you can't make it go away." (May 3, 2007 Hr'g Tr. 47.)

Accordingly, the Court concludes that Peoples violated the agreed-upon September 8, 2005 Consent Stipulation Order and the agreed-upon March 22, 2005 Emergency TRO.

2. The All Writs Injunction

Langer argues that Peoples violated this Court's July 6, 2004 All Writs Injunction by writing an unsubstantiated letter to the Disciplinary Board of the Supreme Court of Pennsylvania. (Mot. for

Protective Order 1.) The Court: (1) concludes that the All Writs Act Injunction is valid; (2) finds that Peoples had knowledge of the All Writs Injunction; and (3) finds that Peoples disobeyed the All Writs Injunction.

a. Validity of the All Writs Act Injunction

Peoples argues that the All Writs Act Injunction is invalid because the Court lacked jurisdiction to issue the order. Additionally, Peoples' counsel took the position at the Contempt Hearing that the All Writs Act Injunction was invalid because the Court did not have the power to enjoin an attorney from fulfilling an obligation under the Pennsylvania Rules of Professional Conduct. The Court rejects these arguments and concludes that the All Writs Act Injunction is a valid order.

First, the Court has already discussed at length the basis for its jurisdiction to issue the All Writs Act Injunction. Accordingly, the Court rejects Peoples' argument that the All Writs Act Injunction is invalid because the Court lacked jurisdiction to issue it.

Second, the All Writs Act Injunction did not prevent Peoples from fulfilling any obligation under the Pennsylvania Rules of Professional Conduct. As background, the All Writs Act Injunction enjoined "John F. Peoples, Esquire . . . from taking any further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in

connection therewith, in any court or forum other than the United States District Court for the Eastern District of Pennsylvania." Peoples conceded during the Contempt Hearing that the All Writs Act Injunction enjoined him from writing to the Disciplinary Board. (May 3, 2007 Hr'g Tr. 28.)

Peoples argues that his letter to the Disciplinary Board dated October 19, 2005 was submitted pursuant to Rule 8.3(a) of the Pennsylvania Rules of Professional Conduct. That rule provides that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." However, Comment 4 to Rule 8.3 provides as follows:

> While a lawyer may report professional misconduct at any time, the lawyer must report misconduct *upon acquiring actual knowledge of said misconduct. The discretionary reporting of misconduct should not be undertaken for purposes of tactical advantage over another lawyer, to punish or inconvenience another for a personal or professional slight, or to harass another lawyer.*

Id. (emphasis added).

The purpose of enjoining Peoples from writing to the Disciplinary Board was to prevent precisely the behavior referred to in Comment 4 to Rule 8.3: to prevent discretionary reporting taken for tactical purposes and to harass another lawyer. On this issue, the Court notes that, if Peoples actually had knowledge of a violation of the Rules of Professional Conduct, he could have referred this behavior to this Court or requested leave to submit a letter to the Disciplinary Board, and he did neither.

Moreover, as previously explained, a "party seeking to challenge the validity of an injunction must seek judicial review, rather than simply disobeying it." *Georgine*, 1995 WL 422792, at *12.

b. Knowledge of the All Writs Act Injunction

Peoples conceded several times during the Contempt Hearing that he knew of the All Writs Act Injunction of July 6, 2004, and more specifically, knew that the order enjoined him from writing to the Disciplinary Board. (See May 3, 2007 Hr'g Tr. 28, stating "we couldn't write the Disciplinary Board"; see also May 3, 2007 Hr'g Tr. 99, 106-07.) The record also establishes that he learned of the All Writs Act Injunction some time prior to September or October of 2004. (May 3, 2007 Hr'g Tr. 28.) However, Peoples testified that he thought the order was mooted by the dismissal of his suit against Langer on November 16, 2004. (May 3, 2007 Hr'g Tr. at 107.) Peoples was wrong. The order was not mooted, nor was there reason for Peoples to believe that the

order was mooted. Thus, the Court concludes that Peoples had knowledge of the July 6, 2004 All Writs Act.

c. Violation of the All Writs Act Injunction

In a letter to the Disciplinary Board dated October 19, 2005, Peoples "lodge[d] a formal complaint against Howard Langer, Esquire . . . in connection with his refusal to honor his contractual responsibility to pay [him] a co-counsel fee of approximately $4.7 million dollars . . . ." Sending this letter constituted a " further action relating to the allocation of fees in MDL 1261, or the action of liaison counsel in connection therewith, in . . .[a] forum other than the United States District Court for the Eastern District of Pennsylvania." (See Order of July 6, 2004, All Writs Act Injunction.) Moreover, the Court finds that Peoples's letter to the Disciplinary Board was written "for purposes of tactical advantage over another lawyer . . . or to harass another lawyer." Comment 4, Rule 8.3, Pennsylvania Rules of Professional Conduct. Accordingly, the Court concludes that Peoples disobeyed the All Writs Act Injunction, and that his letter to the Disciplinary Board dated October 19, 2005, was not a proper submission under Rule 8.3(a) of the Pennsylvania Rules of Professional Conduct.

B. Contempt Remedy

Peoples suffers from severe physical afflictions. As Peoples explained during the

Contempt Hearing, "I'm essentially blind. I have maybe a half a percent to a one-percent vision . . . . I have little tunnels out of which to see, that makes it even worse. My eyes move back and forth, and it's been damaged further because of the diabetes." (May 3, 2007 Hr'g Tr. 13.) Peoples has "very bad diabetes and blood pressure and" does not "walk very well anymore." (May 3, 2007 Hr'g Tr. 15.) He has "contracted [pneumonia] probably 30 or 35 times in the last five years . . . ." (May 3, 2007 Hr'g Tr. 16.) Additionally, Peoples has had "two or three strokes . . . ." (May 3, 2007 Hr'g Tr. at 15.)

On June 29, 2006, when Peoples left the telephone message at issue on Langer's voicemail, he was taking four prescriptions for his blood pressure to prevent him from suffering another stroke. (May 3, 2007 Hr'g Tr. at 15.) Peoples testified that he made the telephone call from the "prostate doctor's office. I was having a lot of trouble with my prostate. . . . I was taking the prostate medication, but it had gotten infected . . . ." (May 3, 2007 Hr'g Tr. 47.) According to Peoples, he was in great pain when he made the call. (May 3, 2007 Hr'g Tr. 47.) Moreover, at that time, Peoples was also suffering from severe depression, for which he also took medication. (May 3, 2007 Hr'g Tr. at 45.)

Peoples began receiving treatment from a psychiatrist after the telephone call on July 29, 2006. He has not left another telephone message on Langer's voicemail since June 29, 2006, and has had no further contact with Langer. At the Contempt Hearing, Peoples initially stated that, he was "going

to try" not to violate the Stipulated Order, but "it's still very difficult because of the hatred that I have for [Langer], it's very difficult." (May 3, 2007 Hr'g Tr. 50.) Later, however, Peoples stated more definitively that he would not violate the Stipulated Order in the future. (May 3, 2007 Hr'g Tr. 51.)

Furthermore, the Court's jurisdiction over this dispute will end upon termination of the class action component of MDL No. 1261 by order and memorandum to be issued upon receipt of a supplement to the Final Report of the Claims Administrator. Thus, a prospective fine would be unenforceable by this Court. On this issue, the Court notes that it has already ruled orally that it would not "impose a penalty for [Peoples] having done what he did," and would only consider imposing "a coercive penalty for a future violation." (May 4, 2007 Hr'g Tr. 111.)

After considering the circumstances and consequences of Peoples' actions, the Court declines to impose any contempt sanctions on Peoples. Because the Emergency TRO and Consent Stipulation Order were not docketed at Peoples' request, these orders will be docketed with the filing of this Memorandum and Order. In view of the fact that there have been no violations of those Orders in more than two years, and considering the fact that the Court's jurisdiction over this dispute will end upon receipt of a supplement to the Final Report of the Claims Administrator in MDL No. 1261, the Emergency TRO, the Consent Stipulation Order, and the All Writs Act Injunction will now be vacated.

VI. IMPOSITION OF DISCIPLINARY SANCTIONS AND REFERRAL TO THE CHIEF JUDGE FOR AN ORDER TO SHOW CAUSE WHY PEOPLES SHOULD NOT BE SUSPENDED FROM THE PRACTICE OF LAW

Langer alleges that Peoples' allegedly threatening telephone messages, his letter to the Disciplinary Board, and his testimony during the Contempt Hearing each mandate imposition of disciplinary sanctions and referral to Chief Judge Bartle for an order to show cause why Peoples should not be suspended from the practice of law. The Court concludes that such action is not required or necessary on the present state of the record.

1. Telephone Messages

Langer argues that Peoples' string of telephone messages warrants disciplinary sanctions and referral to Chief Judge Bartle. The Court has already determined that the telephone messages on Langer's voicemail were largely a consequence of Peoples' severe mental and physical afflictions, and that Peoples has sought psychiatric help since the June 29, 2006 telephone message that gave rise to the instant dispute. Accordingly, the Court declines to impose disciplinary sanctions for those telephone messages or refer Peoples to Chief Judge Bartle on this ground.

2. Letter to the Disciplinary Board

Langer argues that disciplinary sanctions and referral to Chief Judge Bartle are appropriate because, in Peoples' October 19, 2005 letter to the Disciplinary Board, Peoples defamed him and attacked the credibility of this Court.

The Disciplinary Board is aware of the Peoples' letter, and there is no evidence that it has taken any action against either Langer or Peoples. On this issue, the Court will defer to the judgment of the Disciplinary Board. Accordingly, the Court declines to impose disciplinary sanctions or refer Peoples to Chief Judge Bartle on this ground.

3. Statements Made During the Contempt Hearing

Langer also argues that disciplinary sanctions and referral to Chief Judge Bartle are appropriate because, during the Contempt Hearing, Peoples falsely "testified to serious judicial improprieties" by this Court. (Lead Counsel's Memo on Potential Disciplinary Violations at 3.) Without considering the merits of this claim, the Court rejects this argument on the present state of the record.

According to Marcone, Peoples' attorney, Peoples cannot be held accountable for his testimony because, among other puzzling reasons, "absolute immunitey [sic] for waitresses [sic] is standardized by the United States Supreme Court, with applying ancient precedent with logic, public policy as well as history." (Peoples' Mem. of Law Addressing [Potential Disciplinary Sanctions] at 13.) The Court

rejects the argument that Peoples cannot be held accountable for his testimony.

Peoples also argues that he did not testify that the Court engaged in improprieties, but rather that Langer and others led Peoples to believe that Langer had an improper relationship with the Court in order to persuade him to settle his fee dispute.[15] (Peoples' Mem. of Law Addressing [Potential Disciplinary Sanctions] at 3, 12, citing May 4, 2007 Hr'g Tr. 12.) This dispute is part of a drawn-out personal quarrel between Langer and Peoples that warrants no further imposition upon the judicial system. Without addressing the merits of the charges based on statements made during the contempt hearing, on the present state of the record, the Court declines to impose disciplinary sanctions or refer the matter to Chief Judge Bartle.[16]

VII. CONCLUSION

The myriad of motions addressed in this Memorandum relate to a fee dispute between Peoples and Langer that was settled almost four years ago. This drawn out personal quarrel between

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[15] The Court notes that the other individuals to whom Peoples referred during his testimony on this issue, Eugene Spector, Esquire, and Howard Sedran, Esquire, testified that they made no representation to Peoples that Langer had an improper relationship with the Court. See generally May 4, 2007 Tr. at 13-57. Langer also testified to this effect. Id. at 59-129.

[16] Langer also argues that disciplinary sanctions and referral to Chief Judge Bartle are appropriate as to Marcone. Without considering the merits, the Court declines to take such action on the present state of the record.

the two of them must end. It warrants no further imposition on the judicial system.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

IN RE LINERBOARD ANTITRUST LITIGATION	MDL No. 1261
THIS DOCUMENT RELATES TO: Civil Action Numbers 98-5055 and 99-1341	

AND NOW, this 15th day of July, 2008, upon consideration of Howard Langer's Motion for an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring his Behavior to Chief Judge Bartle for an Order to Show Cause Why He Should Not Suspended From Practice and Request for Expedited Hearing (Document No. 838, filed July 5, 2006); John Peoples's Motion to Dismiss Any Reference to a TRO Which Was Entered Improperly After the Case Was Dismissed With Prejudice (Document No. 917, filed October 22, 2006); Cross Motion by Howard Langer to Strike Peoples' Proposed Findings of Fact, Conclusions of Law and the Memorandum of Law in Support of the Motion to Dismiss (Document No. 867 , filed October 25, 2006); John Peoples's Motion to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure Rule 12 (b) (1) (Document No. 918, filed February 13, 2007); Motion of Howard Langer,

Esquire, and Langer & Grogan, P.C. to Stay the Peoples's Action, to Consider the Status of the July 6, 2005 All Writs Act Injunction in the Event of a Remand of the Peoples Action, and to Schedule a Hearing on Liaison Counsel's First Request for Court Determination of Allocation in MDL 1261 (Document No. 412, filed July 9, 2004); John Peoples's Motion to Compel (Document No. 67, filed March 7, 2008); and, Howard Langer's Motion for an Order to Show Cause Why John Peoples and the Law Office of John Peoples Should Not Be Held in Further Contempt For Initiating a Lawsuit in Delaware County Court in Violation of This Court's All Writs Act Injunction (Document No. 378, filed February 22, 2008, in Civil Action No. 98 - 5055; and, Document No. 1019, filed March 20, 2008, in MDL 1261), and the related submissions of the parties, following a Contempt Hearing conducted on March 16, 2007, May 3, 2007, and May 4, 2007, for the reasons set forth in the attached Memorandum, IT IS ORDERED as follows:

1. Howard Langer's Motion for an Order Holding John Peoples, Esquire in Contempt, Imposing Disciplinary Sanctions Upon Him, and Referring his Behavior to Chief Judge Bartle for an Order to Show Cause Why He Should Not Suspended From Practice and Request for Expedited Hearing (Document No. 838) is DENIED;

2. John Peoples's Motion to Dismiss Any Reference to a TRO Which Was

Entered Improperly After the Case Was Dismissed With Prejudice (Document No. 917) is DENIED;

3. Cross Motion by Howard Langer to Strike Peoples' Proposed Findings of Fact, Conclusions of Law and the Memorandum of Law in Support of the Motion to Dismiss (Document No. 867) is DENIED AS MOOT;

4. John Peoples's Motion to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure Rule 12 (b) (1) (Document No. 918) is DENIED;

5. Motion of Howard Langer, Esquire, and Langer & Grogan, P.C. to Stay the Peoples's Action, to Consider the Status of the July 6, 2005 All Writs Act Injunction in the Event of a Remand of the Peoples Action, and t o Schedule a Hearing on Liaison Counsel's First Request for Court Determination of Allocation in MDL 1261 (Document No . 412) is DENIED AS MOOT.

6. John Peoples's Motion to Compel (Document No. 67) is DENIED AS MOOT; and,

7. Howard Langer's Motion for an Order to Show Cause Why John

Peoples and the Law Office of John Peoples Should Not Be Held in Further Contempt For Initiating a Law suit in Delaware County Court in Violation of This Court's All Writs Act Injunction (Document No 378, in Civil Action No. 98 - 5055; and, Document No. 1019, in MDL 1261) is DENIED.

IT IS FURTHER ORDERED as follows:

1. The deputy clerk shall docket the March 22 ,2005 Temporary Restraining Order and the September 8, 2005 Con sent Stipulation Order .

2. The All Writs Act Injunction (Document No. 508, filed July 8, 2004), the March 22, 2005 Temporary Restraining Order, the September 8, 2005 Consent Stipulation Order are VACATED.

BY THE COURT:
/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.